

STATE OF CALIFORNIA  
 AGRICULTURAL LABOR RELATIONS BOARD

ABATTI FARMS, INC.,	)	
ABATTI PRODUCE, INC.,	)	
	)	
Respondent,	)	Case No. 75-CE-60-E(R)
	)	
and	)	
	)	
UNITED FARM WORKERS OF	)	9 ALRB No. 59
AMERICA, AFL-CIO,	)	(6 ALRB No. 57)
	)	(5 ALRB No. 34)
Charging Party.	)	
	)	

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SUPPLEMENTAL DECISION AND ORDER

On October 4, 1982, Administrative Law Judge (ALJ)<sup>1/</sup> Stuart A. Wein issued his Supplemental Decision and Recommended Order in this compliance backpay proceeding. Thereafter Abatti Farms, Inc., Abatti Produce, Inc. (Respondent), General Counsel and Charging Party, United Farm Workers of America, AFL-CIO, (UFW or Union) each timely filed exceptions to the ALJ's Supplemental Decision and a supporting brief. General Counsel filed a Response to Respondent's exceptions and Respondent filed a Response to Charging Party's exceptions.

Pursuant to provisions of California Labor Code section 1146<sup>2/</sup> the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this proceeding to a

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<sup>1/</sup> At the time of the issuance of the ALJ's Supplemental Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code, tit. 8, § 20125, amended eff. Jan. 31, 1983.)

<sup>2/</sup> Unless otherwise specified, all code sections herein refer to the California Labor Code.

three-member panel.

The Board has considered the record and the ALJ's Decision in light of the exceptions and briefs and has decided to affirm the ALJ's rulings, findings and conclusions as modified herein and to adopt his recommended Order with modifications.

The finding of an unlawful discriminatory discharge is presumptive proof that the discriminatee is owed some amount of backpay by the respondent. (See NLRB v. Mastro Plastics Corporation (2nd Cir. 1965) 354 F.2d 170 [60 LRRM 2578].) The burden is on respondent to establish its affirmative defenses, including interim earnings, failure to reasonably seek interim employment, willful loss of interim earnings, disability and impropriety of the General Counsel's backpay formula. (See Sioux Falls Stock Yards Company (1978) 236 NLRB 543 [99 LRRM 1316]; Midwest Hanger Co. (1975) 221 NLRB 911 [91 LRRM 1218].)

It is well settled that transportation costs which are incurred by the discriminatee while seeking interim employment are compensable (High and Mighty Farms (1982) 8 ALRB No. 100; Aircraft and Helicopter Leasing and Sales, Inc. (1976) 227 NLRB 644 [94 LRRM 1556]), as are medical expenses which would have been covered by the respondent's medical insurance plan. (Amsher Associates, Inc. (1978) 234 NLRB 791 [97 LRRM 1360].) As no exceptions were taken to the ALJ's findings regarding the transportation and medical expenses incurred by the discriminatees, we affirm those findings.

Respondent excepts to the backpay formula used for the sprinkler crew, arguing that gross backpay should accrue

only during periods when the third sprinkler crew ("caminero") was working, i.e., periods when nine or more sprinklers were employed rather than five or more. We find no merit in Respondent's exception. The evidence shows that only five sprinkler crew members had more seniority than the discriminatees. Respondent has failed to meet its burden of showing that sprinklers worked only by crews and that the discriminatees would not have worked when fewer than nine sprinklers were employed. General Counsel's backpay formula for the discriminatees in the sprinkler crew is reasonable and appropriate, and Respondent has failed to present a more appropriate formula. Accordingly, we affirm the ALJ's Decision to adopt the General Counsel's formula.

Raul Jimenez

Respondent excepts to the ALJ's finding that the \$600 capital loss incurred by discriminatee Raul Jimenez is compensable. We find no merit in that exception. Mr. Jimenez' loss is attributable to Respondent's discriminatory action, and Respondent has failed to rebut General Counsel's prima facie showing of causation. Our makewhole order includes any loss of pay and other economic losses the discriminatees have suffered as a result of Respondent's unlawful discriminatory actions. Where any uncertainties exist, they shall be resolved against the respondent, whose unlawful conduct created the uncertainties. (Kyutoku Nursery, Inc. (1982) 8 ALRB No. 73; Robert H. Hickam (1983) 9 ALRB No. 6.)

Respondent's October 5, 1981, offer to reinstate Raul

Jimenez to a temporary position does not satisfy Respondent's obligation to offer Mr. Jimenez reinstatement to his former job. However, Mr. Jimenez told foreman Eddie Sanchez he could not return to work because he had his own business doing cement work. We affirm the ALJ's finding that Mr. Jimenez sufficiently expressed his voluntary removal from the labor market and his intent to abandon any right to reemployment with Respondent. (See Maggio-Tostado, Inc. (1978) 4 ALRB No. 36; Heinrich Motors, Inc. (1967) 166 NLRB 783 [65 LRRM 1668].) Thus, we find that Respondent's backpay liability to Mr. Jimenez ceased on October 8, 1981, the date he voluntarily relinquished his right to reinstatement.<sup>3/</sup>

Jesus Solano and Elena Solano

We find no merit in Respondent's exceptions to the ALJ's findings that Jesus Solano and Elena Solano were not willfully idle during 1979 when they both participated in the UFW strike against California Coastal Farms. The evidence clearly supports the ALJ's finding that both Jesus and Elena Solano made a reasonable attempt to seek interim employment during the period of the strike and were not willfully idle even though they participated in the picketing activities at California Coastal Farms.

We also find no merit in Respondent's argument that

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<sup>3/</sup> We might find otherwise if there was evidence that Mr. Jimenez refused Respondent's offer of reinstatement because it was to a temporary job. Since the offer was not a valid offer of reinstatement, Mr. Jimenez had the right to refuse it without waiving his right to reinstatement to his former job.

Elena Solano willfully incurred a loss of interim earnings when she quit her job as a kitchen assistant at the De Anza Hotel because her coworkers made it difficult for her to work there. (See Bruce Church, Inc. (1983) 9 ALRB No. 19.)

Elena Solano suffered a knee injury in March 1977 while working for Gourmet Harvesting. The knee injury was related to her interim employment, and she is entitled to backpay for the period she was unable to work due to the injury. "Where an interim disability is closely related to the nature of the interim employment or arises from the unlawful discharge and is not a usual incident of the hazards of living generally, the period of disability will not be excluded from backpay."

(American Manufacturing Company of Texas (1967) 167 NLRB 520 [66 LRRM 1122].)

Andres Montoya

We affirm the ALJ's finding that Andres Montoya suffered from rheumatism and back pains as a result of his interim employment "pitching" watermelons. Respondent failed to prove that Mr. Montoya's rheumatism and back pains were a usual incident of the hazards of living generally and not a result of his interim employment. (See American Manufacturing Company of Texas, supra, 167 NLRB 520.)

Abelino Ortega

Respondent excepts to the ALJ's finding that Abelino Ortega is entitled to backpay from 1978 to 1980, arguing that he was disabled and, alternatively, did not make a reasonably diligent search for interim work. The UFW excepts to the ALJ's

finding that Mr. Ortega was disabled and could not work as an agricultural employee as of January 1, 1980. Respondent relies upon the Workers' Compensation claim filed by Mr. Ortega in August 1978, in which he stated that he suffered from work related disabilities.<sup>4/</sup> The filing of a claim for workers' compensation benefits alone is not sufficient to establish that Mr. Ortega was disabled and unable to work. (See Dayton Tire and Rubber Co. v. NLRB (10th Cir. 1979) 591 F.2d 566 [100 LRRM 2549].) James Lasky, M.D., testified that he examined Mr. Ortega on April 16, 1980 and concluded that, as of that day, Mr. Ortega was incapable of performing agricultural work. There is no evidence that Mr. Ortega was unable to work prior to April 16, 1980.<sup>5/</sup> Accordingly, we find that Respondent's backpay liability to Mr. Ortega terminated on April 16, 1980, the date his disability was established. General Counsel has failed to prove that Mr. Ortega was capable of performing agricultural work after April 16, 1980 and prior to the date Respondent offered him reinstatement.

Isidoro Andrade Prieto

We affirm the ALJ's finding that Isidoro Andrade Prieto (Andrade) did not receive a valid offer of reinstatement until the hearing and was not reinstated to his former job until May 24,

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<sup>4/</sup> The claim was subsequently dismissed without prejudice.

<sup>5/</sup> Uncertainties shall be resolved against the wrongdoer. (Kyutoku Nursery, Inc., supra, 8 ALRB No. 73; Robert H. Hickam, supra, 9 ALRB No. 6.) The record indicates that Mr. Ortega worked in Mexicali from March 1978 up to the time of the hearing. He worked from November 18, 1978 to December 16, 1978 as an agricultural employee for Sun Harvest.

1982. General Counsel excepts to the ALJ's finding that Respondent reinstated Mr. Andrade to his former job on May 24, 1982, arguing that Mr. Andrade was given an old tractor, no protective equipment, and an undesirable assignment and was mistreated by Tony Abatti after he returned to work for Respondent. General Counsel asserts that, based on those circumstances, Mr. Andrade was not reinstated to his former job. We find that General Counsel's offer of proof is insufficient to rebut the ALJ's finding that Mr. Andrade was reinstated to his former job on May 24, 1982.

Reynaldo Rodriguez Bermea

We affirm the ALJ's finding that bonuses paid to Reynaldo Rodriguez Bermea are to be deducted from his gross backpay as interim earnings because they were given as compensation directly related to and based upon normal performance of regularly assigned duties. (K. & H. Specialties Co., Incorporated (1967) 163 NLRB 644 [64 LRRM 1411].) Accordingly, the annual bonuses received by Mr. Bermea in 1979 and 1980 shall be deducted from Respondent's backpay liability for those years, respectively.

Computation of Backpay on a Daily Basis

Respondent excepts to the ALJ's decision to compute net backpay liability on a daily basis. Respondent argues that this Board must follow National Labor Relations Board (NLRB or national board) precedent and compute backpay on a quarterly basis pursuant to F. W. Woolworth Company (1950) 90 NLRB 289 [26 LRRM 1185] (Woolworth). Section 1148 requires the Board

to follow applicable precedents of the National Labor Relations Act (NLRA). But in situations where the nature of California agriculture is distinct from the typical industrial setting, the Board is not bound by NLRA precedent. (ALRB v. Superior Court (Pandol and Sons) (1976) 16 Cal.3d 392; see also San Clemente Ranch, Ltd. v. ALRB (1981) 29 Cal.3d 874.)

In Woolworth, the NLRB adopted a backpay formula whereby calculations for the amount of backpay owed would be made on a quarterly (three month) basis. The NLRB found it salutary to divide the backpay period into calendar quarters because of the financial hardships worked upon discriminatees when the calculations were made for the backpay period as a whole. The goal of any backpay formula, the national board noted, was "the restoration of the situations as nearly as possible, to that which would have obtained but for the illegal discrimination." (90 NLRB at 292.) The national board found that the old formula, which was based on the entire backpay period, penalized workers who were unemployed for a period following their unlawful discharge, but who eventually succeeded in obtaining work at higher wages. In such circumstances, the unfair result had been a progressive reduction or complete elimination of backpay owed, thereby depriving the discriminatee of money he or she would have earned during the period of unemployment absent the Respondent's unfair labor practice.

Not only did such a situation enable the wrongdoer to escape some or all of the liability for its wrongful conduct, but it also had a deleterious effect upon the companion remedy



of reinstatement. First, some employers deliberately delayed reinstatement, hoping that the longer delay would lead to a lower ultimate net backpay liability or none at all. Second, many employees waived their right to reinstatement in order to toll the running of the backpay period and preserve the amount owed them. The NLRB observed that post-discrimination periods of unemployment, or interim employment at lesser wages, may have resulted in the exhaustion of employee's savings, his or her incurrences of debts, and even in the deprivation of the necessities of life. (90 NLRB at 292.) In order to avoid such inequitable results, the national board adopted the "Woolworth formula," which divided the backpay period into calendar quarters. (See also Robert E. Cashdollar Sr. (1982) 259 NLRB 1023 [109 LRRM 1086], enforced (3rd Cir. 1982) 688 F.2d 819 [111 LRRM 2280].)

The Board has wide discretion in fashioning remedies under the Agricultural Labor Relations Act (ALRA or Act), and a remedial order of this Board will be reversed only where there is an abuse of discretion. (Butte View Farms v. ALRB (1979) 95 Cal.App.3d 961.) Because of the nature of agricultural labor in California, the ALRB has determined that it is necessary to divide the backpay period into components shorter than calendar quarters in order to avoid the same potential deleterious and unjust effects that led the national board to adopt its Woolworth formula.

We note that the NLRB is not wedded to the Woolworth quarterly computation, but that it is the "usual formula" for

the computation of net backpay. (See NLRB v. J. H. Rutter-Rex Manufacturing Co. (1969) 369 U.S. 258 [72 LRRM 2881]; Golay & Company, Inc. v. NLRB (7th Cir. 1971) 447 F.2d 290 [77 LRRM 3041]; San Juan Mercantile Corp. (1962) 135 NLRB 698 [49 LRRM 1549].)

The "usual" employment situation in the industrial sector is full time steady employment. In contrast, the "usual" employment situation in California agriculture is sporadic, seasonal employment in the course of which hours and wages fluctuate daily for agricultural workers. Employees often work for limited periods of time during a short harvest, or a thinning or pruning season, and often work less than a full week or only a few days at a time before moving on to a different job, a different employer, or a different area. The availability of work is affected by many factors beyond the control of either the employer or the employee, such as weather, perishability of the crop and consumer (market) demand. (High and Mighty Farms (1982)

8 ALRB No. 100.) Thus, we have held that the Woolworth formula is not an applicable NLRA precedent for California agriculture because it does not take into account the seasonal and sporadic nature of agricultural employment. The agricultural industry relies, in large part, on short-term employment of a migrant labor force.

The NLRB does not deduct a discriminatee's interim earnings from his or her gross backpay for those days on which the respondent would have had no work to offer the discriminatee. (San Juan Mercantile Corp., supra, 135 NLRB 698; Brotherhood of Painters, Local 419 (1957) 117 NLRB 1596 [40 LRRM 1051].)

We find that this rule regarding interim earnings is appropriate in the agricultural setting where most farm workers obtain work on a sporadic daily or seasonal basis. The computation of backpay on a daily basis, where interim wages earned on a day when work was not available at respondent's farm or ranch do not offset the respondent's gross backpay liability, is reasonable and effectuates the purposes of the Act. Because the interim earnings on such days are a collateral source of income and are not a result of Respondent's discrimination,<sup>6/</sup> such earnings do not reduce or mitigate the gross backpay owed the discriminatee. Similarly, the respondent does not owe the discriminatee backpay for those days when the discriminatee would not have worked for the respondent.

Our daily-computed backpay formula encourages the respondent to immediately offer reinstatement to the discriminatee because it is liable for backpay, plus interest, for every day

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<sup>6/</sup> Other collateral sources of income which are not deducted from the gross backpay owed to the discriminatee include: unemployment insurance compensation (NLRB v. Gullet Gin Co. (1951) 340 U.S. 361, 71 S.Ct. 337 [27 LRRM 2230]); strike benefits (NLRB v. Madison Courier, Inc. (D.C. Cir. 1972) 472 F.2d 1307 [80 LRRM 3377]); supplemental earnings from "excess overtime" (United Aircraft Corporation (1973) 204 NLRB 1068 [83 LRRM 1616]); supplemental earnings from a "moonlighting job" the discriminatee held prior to the discriminatory discharge (Ibid.); and a portion of worker's compensation for an injury sustained on an interim job. (American Manufacturing Co. of Texas (1967) 167 NLRB 520 [66 LRRM 1122]; United Aircraft Corp., supra, 204 NLRB 1068.)

In Phelps Dodge Corp. v. NLRB (1941) 313 U.S. 177 [8 LRRM 439], the U.S. Supreme Court noted with approval that deductions for interim earnings in that case had been limited to earnings during the hours when the worker would have been employed by the respondent. Also see this same reference in NLRB v. Miami Coca-Cola Bottling Co. (5th Cir. 1966) 360 F.2d 569 [62 LRRM 2155] and United Aircraft Corporation, supra, 204 NLRB 1068.

the discriminatee would have worked for the respondent absent its unfair labor practice(s), and on which the discriminatee is unable to find interim employment at a wage equal to or greater than that paid by the respondent. An entire agricultural season is often short, and immediate reinstatement is crucial, both to the discriminatee and his or her coworkers so they will not be deterred from the exercise of the rights granted to them by the Act. The daily-computed backpay formula does not necessarily result in greater liability than the quarterly Woolworth formula. The result is larger only if the discriminatee's earnings from the interim employment fluctuate greatly or are sporadic, so that the discriminatee at times earns more than he or she would have earned from the respondent on a given day. It is the discriminatee's efforts to find interim employment and his or her labors that result in the higher earnings. It is the discriminating employer's unlawful action which placed the discriminatee in the position of seeking interim employment, earning whatever he or she can.<sup>7/</sup> The agricultural discriminatee may have no other source of income.<sup>8/</sup> While the employer is entitled to apply the discriminatee's daily interim earnings in order to reduce or eliminate its corresponding daily liability,

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<sup>7/</sup> The discriminatee has a duty to seek interim employment. (Bruce Church, Inc. (1983) 9 ALRB No. 19.)

<sup>8/</sup> Our backpay award is designed to make the discriminatee whole, to place him or her back in the position he or she would have been in but for the discrimination. We realize that a monetary award will not necessarily make a discriminatee whole for any mental or physical suffering the discriminatee may have experienced.

the respondent should not be encouraged to delay reinstatement and thereby reap the benefits of the discriminatee's "extra" efforts and labor.

This Board, in the exercise of its informed discretion, may order any appropriate remedy in order to effectuate the purposes of the Act. The Board's power to order backpay as well as its power to order other remedies "is for the [NLRB] to wield, not for the court." (See NLRB v. J. H. Rutter-Rex Mfg., Co. (1969) 369 U.S. 258 [72 LRRM 2881].) The use of daily calculations effectuates the purposes of the ALRA. It is accurate and thus appropriate and reasonable; it encourages the discriminating employer to offer the discriminatee reinstatement, so that it may not "profit" from its own delay; and, as near as possible, it places the discriminatee in the economic position he or she would have been in but for the respondent's discrimination.

#### Adjustments to ALJ's Calculations

We thus find merit in the exceptions of the General Counsel and Charging Party to the ALJ's use of quarterly rather than daily computations with regard to Reynaldo Rodriguez Bermea and Agustin Rodriguez. We reject the ALJ's explanation that each of these discriminatees was no longer subject to the insecurity of having to seek work on a daily basis and that it therefore was appropriate to use quarterly computations.

As Respondent failed to prove that daily interim earnings data were unavailable, we have converted all the interim earnings in this case to daily figures based on a six-day work

week or, where there is evidence of only a few days per week worked, to that number of days, and then deducted those interim earnings on a daily basis from the gross backpay data.<sup>9/</sup> (See Bruce Church, Inc., supra, 9 ALRB No. 19.)

We note that General Counsel has records of the total interim earnings of each discriminatee for a particular employer but not necessarily all employers. Where a discriminatee's testimony is inconsistent with the interim earnings records, we shall resolve the inconsistencies as equitably as possible.

The ALJ found that Miguel Lopez Chavez (Lopez) was on sick leave from July 15, 1980 to September 20, 1980 and therefore was not entitled to backpay during that period of time because he was not available for work. Mr. Lopez did not testify about this period of time, but there is evidence that he worked for Jose Estrada, El Don and Juan Chavez during this period. We find that Mr. Lopez was available for work because he did in fact work during the period from July 15 to September 20, 1980 and therefore is entitled to receive backpay for this period.

Lorenzo Martinez Chavarria (Martinez) testified that in 1976 and 1977 he worked in Woodland picking tomatoes, earning \$3.15 an hour, working eight hours a day, six days a week.<sup>10/</sup> His testimony regarding the duration of these two interim jobs does not conform to the General Counsel's records. Realizing that Mr. Martinez' memory may not be accurate regarding the

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<sup>9/</sup> See Appendix A.

<sup>10/</sup> Daily interim earnings for these employment periods are \$25.20 rather than \$21.70.

duration of these jobs, we shall expand the interim employment period to conform to the interim earnings totals. In March 1977, Mr. Martinez began pruning for Freedman earning \$3.30 an hour, eight hours a day, six days a week.<sup>11/</sup> The duration of this employment was not specified. The interim earnings total from Freedman for this period shall be used to compute the duration. We find no evidence that Mr. Martinez worked in Woodland during the month of November 1976. Nor do we find evidence to support the ALJ's addition of interim earnings for December 10 and 11, 1976, and October 17 through November 19, 1977 for work in Woodland. Thus those interim earnings shall be deleted.

#### Substantially Equivalent Employment

There are two distinct situations to which the concept of substantially equivalent employment is applied. Both deal with obtaining employment of a nature which would limit a respondent's backpay liability. One application of the concept of substantially equivalent employment is embodied in a Board Order which requires a respondent to offer to reinstate a discriminatee to his or her former job or to a substantially equivalent job. In the second situation, the discriminatee obtains substantially equivalent employment with another employer instead of the respondent.

A respondent's offer to reinstate a discriminatee to his/her former or substantially equivalent job terminates the backpay period. Obtaining substantially equivalent employment

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<sup>11/</sup> Daily interim earnings for this period are \$26.40 rather than \$21.60.

with another employer does not terminate the backpay period, and the gross backpay is not reduced beyond the amount of the discriminatee's interim earnings. (See NLRB v. Mastro Plastics Corporation (2nd Cir. 1965) 354 F.2d 170 [60 LRRM 2578].) A discriminatee is entitled to an offer of reinstatement, if ordered by the Board, even after he or she has obtained substantially equivalent employment elsewhere.<sup>12/</sup> (Phelps Dodge Corp. v. NLRB (1941) 313 U.S. 177 [8 LRRM 439].) A discriminatee is entitled to reinstatement to his or her former job.<sup>13/</sup> If the discriminatee's former job no longer exists, the respondent must reinstate the discriminatee to a substantially equivalent job. (Wonder Markets Inc. (1980) 249 NLRB 294 [104 LRRM 1105]; Trustees of Boston University (1976) 224 NLRB 1385 [93 LRRM 1450]; NLRB v. Draper Corp. (1st Cir. 1947) 159 F.2d 294 [19 LRRM 2267].)

Whether a discriminatee has been offered reinstatement to a substantially equivalent job or has obtained substantially equivalent interim employment is a factual determination which must be made on a case-by-case basis. It is sometimes difficult to determine whether a discriminatee's employment is substantially equivalent in either instance. Obvious factors which must be considered are wages, hours and type of employment (temporary or permanent). Beyond these, different factors are taken into

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<sup>12/</sup> An offer of reinstatement to one's former or substantially equivalent job satisfies the Board's Order and effectuates the policies of the ALRA or NLRA.

<sup>13/</sup> A respondent may be required to displace an employee in order to reinstate a discriminatee to his or her former position. (See American Medical Insurance Company (1978) 235 NLRB 1417 [98 LRRM 1538].)



consideration depending on whether the employer is the respondent (discriminating employer) or another employer.

Substantially equivalent interim employment in the industrial sector is "employment at the same or greater rate of pay in a production-type job with a reasonable continuation of employment and expectation of future employment."

(Southeastern Envelope Co., Inc. (1979) 246 NLRB 423

[102 LRRM 1567].) This definition is primarily concerned with the economic aspects of the interim employment (wages or salary), but other work-related factors may be considered.

The definition of a substantially equivalent job to which a discriminatee is reinstated is more complex. In order to be substantially equivalent, the job must, as nearly as possible, place the discriminatee in the situation he or she would have obtained but for the illegal discrimination. (Phelps Dodge Corp. v. NLRB, supra, 313 U.S. 177; NLRB v. Draper Corp., supra, 159 F.2d 294; Chase National Bank of the City of New York (1946) 65 NLRB 827 [17 LRRM 255].) Thus, a respondent's obligation is to restore the status quo ante.

The question of what constitutes "substantially equivalent employment" cannot be answered by a mechanical application of the phrase itself, but must be determined on a case-by-case basis through an objective appraisal of a number of factors, both tangible and intangible.<sup>14/</sup> (Little Rock Airmotive, Inc. (1970) 182 NLRB 666 [74 LRRM 1198].) We shall

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<sup>14/</sup> This may include the desire and intent of the employee concerned.

not attempt to set any hard and fast rules, but we note that such factors as wages, hours, fringe benefits (health insurance, retirement, seniority for purposes of vacation, retention and promotion, etc.), job skills required and/or utilized, job location and distance between the location of the job and the employee's home, differences in duties and responsibilities, differences in working conditions and other work related factors must be considered. (See Little Rock Airmotive, Inc., supra, 182 NLRB 666.) Both the similarities and dissimilarities of the jobs must be considered, and they must be considered together as well as individually. (See J/B Industries, Inc. (1979) 245 NLRB 538 [102 LRRM 1500].) Substantially equivalent employment has not been found when the job was temporary (John L. Lutz Welding and Fabricating, Inc. (1978) 239 NLRB 582 [99 LRRM 1723]), the salary was less (Chase National Bank of the City of New York, supra, 65 NLRB 827; Southeastern Envelope Co., Inc., supra, 246 NLRB 423), the work or assignment involved was less desirable (Royal Crown Bottling Company, Inc. (1971) 188 NLRB 352 [76 LRRM 1303]), the work required different skills and involved different working conditions (Polynesian Cultural Center, Inc. v. NLRB (5th Cir. 1978) 587 F.2d 689 [100 LRRM 2349]), the work was harder (Ramona's Mexican Food Products, Inc. (1973) 203 NLRB 663 [83 LRRM 1705]), the job classification was different with different duties (American Medical Insurance Company, Inc. (1978) 235 NLRB 1417 [98 LRRM 1538]), the work shift was different (Ibid.), the job  
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was at a different location (Scientific Pest Control Corporation (1976) 224 NLRB 1651 [93 LRRM 1265]), the job required selling different merchandise (DeLorean Cadillac, Inc. (1977) 231 NLRB 329 [96 LRRM 1347]) or the job was seasonal (NLRB v. Blue Hills Cemetery, Inc. (1st Cir. 1977) 567 F.2d 529 [97 LRRM 2291]). Because of the unique and complex nature of agricultural employment in California, determining what constitutes substantially equivalent employment in agriculture is even more difficult than in the industrial sector.

Two discriminatees, Ramon Berumen and Francisco Ortiz, returned to work for Respondent in Tomas Romero's melon crew prior to being offered reinstatement to their former jobs as shovelers. As shovelers, Mr. Berumen and Mr. Ortiz both worked year-round for Respondent; employment with the melon crew was seasonal. Both men suffered economic losses when they worked on the melon crew. Their shovelers' jobs were still available and each was entitled to an offer of reinstatement to his former job. We conclude that Mr. Berumen and Mr. Ortiz did not obtain substantially equivalent employment when they began working for Respondent in Tomas Romero's melon crew, and Respondent's backpay liability continued until they were offered reinstatement to their former jobs. (See NLRB v. Blue Hills Cemetery Inc., *supra*, 567 F.2d 529.)

Respondent contends that Lorenzo Martinez Chavarria, Miguel Lopez Chavez, Jr., Agustin Rodriguez, and Reynaldo Rodriguez Bermea each found substantially equivalent employment with another employer prior to being offered reinstatement by

Respondent, and therefore the backpay liability as to each of them should be tolled. Respondent has misstated the law. Respondent's gross backpay liability for each discriminatee continues to accrue, but is offset by the discriminatee's interim earnings. The offset may not exceed the amount of interim earnings earned by the discriminatee. Thus, if interim earnings for any discriminatee, calculated on a daily basis, equal or exceed the gross backpay due that discriminatee, Respondent incurs no net backpay liability. Gross backpay liability terminates only when an offer of reinstatement to the former job is made, or to a substantially equivalent job if the former job is unavailable, or a discriminatee waives or abandons his or her right to reinstatement. (See Mastro Plastics Corporation (1962) 136 NLRB 1342 [50 LRRM 1006]; Maggio-Tostado, Inc., supra, 4 ALRB No. 36.)

We affirm the ALJ's findings that Lorenzo Martinez Chavarria, Miguel Lopez Chavez, Jr., Agustin Rodriguez and Reynaldo Rodriguez Bermea did not obtain substantially equivalent employment with another employer. Even if they had secured substantially equivalent employment, Respondent's backpay liability would not be tolled; during their interim employment, each of the discriminatees continued to incur economic losses that he would not have incurred but for Respondent's unlawful conduct.

#### Interest Rate

General Counsel and Charging Party except to the ALJ's finding that the interest on the backpay awards must be computed

at 7% per annum rather than at the interest rate set forth in our Decision and Order in Lu-Ette Farms, Inc. (1982)

8 ALRB No. 55. Our Order in Abatti Farms, Inc. (1979)

5 ALRB No. 34 states that each discriminatee shall be made whole "for any loss of pay or other economic losses, plus interest thereon at a rate of seven percent per annum ..." This order was enforced by the California Court of Appeals, Fourth District, Division One, in Abatti Farms, Inc. v. ALRB (1980) 107 Cal.App.3d 317.

We noted in High and Mighty Farms (1982) 8 ALRB No. 100 that the appeal process under the National Labor Relations Act (NLRA) differs from the appeal process under the Agricultural Labor Relations Act (ALRA). Orders issued by the NLRB are not self-executing, and the NLRB must apply to the appropriate United States Court of Appeals to secure enforcement of its orders. Any person aggrieved by a final order of the NLRB may seek review of the order. Unlike the NLRA, the ALRA provides for discretionary review of our orders by a California Court of Appeal, rather than review as of right under the NLRA. Thus under the ALRA, when a court of appeal declines to exercise jurisdiction by denying a petition for review, the status of the case is as if no appeal had been filed, and this Board retains jurisdiction to modify and enforce its remedial Order. (High and Mighty Farms, supra, 8 ALRB No. 100 citing Tex-Cal Land Management, Inc. v. ALRB (1979) 24 Cal.3d 335.)

Unlike High and Mighty Farms, the court of appeal granted the petition for review in this case and enforced our.

remedial Order. By granting review, the court of appeal assumed jurisdiction of the proceeding.<sup>15/</sup> By enforcing our Decision and Remedial Order, the Remedial Order is merged in the decree of the court.<sup>16/</sup> (See International Union of Mine, Mill and Smelter Workers v. Eagle-Picher Mining and Smelting Co. (1945) 325 U.S. 335, 655 S.Ct. 1166 [16 LRRM 689]; Haddon House Food Products, Inc. (1982) 260 NLRB No. 146 [109 LRRM 1233].) We cannot modify the interest rate paid on the backpay amounts due to the discriminatees because we do not have the jurisdiction to do so.

Because the 7% interest rate included in our original remedial Order does not adequately compensate the discriminatees, and may tend to discourage voluntary settlement and encourage

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<sup>15/</sup>Section 1160.8 states in part "... Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board."

<sup>16/</sup>We are mindful of the differences between the ALRA and NLRA but do not feel that this Board possesses the jurisdiction to modify an order after it has been enforced by the Court of Appeal or Supreme Court. "Finality to litigation is an end to be desired as well in proceedings to which an administrative body is party as in exclusively private litigation. The party adverse to the administrative body is entitled to rely on the conclusiveness of a decree entered by a court to the same extent that other litigants may rely on judgments for or against them." (International Union of Mine, Mill and Smelter Workers v. Eagle-Picher Mining and Smelting Co., supra, 325 U.S. 335.) Such finality is also desired under the ALRA to the extent that this Board has rendered a decision.

dilatory tactics (see Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55), we shall petition the court of appeal for a prospective modification of the Remedial Order to adjust the interest rate on the backpay amounts due to the discriminatees to reflect the Board's current policy of awarding interest pursuant to our Decision and Order in Lu-Ette Farms, Inc., supra, 8 ALRB No. 55.<sup>17/</sup>

#### ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondents Abatti Farms, Inc. and Abatti Produce, Inc., its officers, agents, successors, and assigns, shall pay to each of the discriminatees, whose names are listed below, the backpay amount listed next to his or her name, plus interest at the rate of seven percent per annum computed quarterly from the date the backpay period commenced. Interest shall continue to accrue at a rate of seven percent per annum until such date as the California Court of Appeal having jurisdiction over this matter modifies the order

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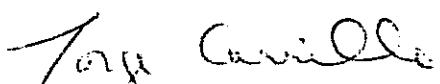
<sup>17/</sup>Without explanation, the National Labor Relations Board has consistently declined to apply the interest rates it set forth in Florida Steel (1977) 231 NLRB 651 [96 LRRM 1070] where its original order was enforced by a federal Court of Appeals. (See Pierre Pelletton Enterprises (1977) 239 NLRB 1211 [100 LRRM 1131]; S. E. Nichols of Ohio, Inc. (1981) 258 NLRB 1 [108 LRRM 1277]; and International Association of Bridge, Structural and Reinforced Iron Workers Union, Local 378 (1982) 261 NLRB No. 56 [110 LRRM 1091].) On the other hand, the NLRB has consistently added interest onto a backpay award, where its original order failed to order the payment of any interest, despite the enforcement of the original order by a Court of Appeal. (See Operating Engineers Union (1955) 151 NLRB 972 [58 LRRM 1532]; Fibreboard Paper Products (1969) 180 NLRB 142 [72 LRRM 1617].) When ruling in these cases, the NLRB relied on its discretion to modify an award to include interest without further discussion.

regarding the interest rate; the interest rate thereafter shall be in accordance with the Court's order, but if no rate or formula is specified, interest shall be computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

Reynaldo Bermea	\$ 7,960.85
Ramon Berumen	21,822.26
Lorenzo Martinez Chavarria	21,748.98
Andres Montoya	29,953.65
Francisco Ortiz	24,344.93
Agustin Rodriguez	12,764.46
Herlinda Avitua	19,874.95
Elena Solano	21,569.82
Jesus Solano	22,364.65
Miguel Lopez Chavez	29,758.62
Raul Jimenez	27,981.98
Isidoro Andrade Prieto	30,981.27
Abelino Ortega	41,586.40

Dated: October 7, 1983

  
ALFRED H. SONG, Chairman

  
JORGE CARRILLO, Member

  
PATRICK W. HENNING, Member



## APPENDIX A

### REYNALDO BERMEA

1976	\$ 4,861.42
1977	919.38
1978	843.98
1979	515.24 <sup>1/</sup>
1980	226.54 <sup>2/</sup>
1981	4.29
Expenses	<u>590.00</u>
TOTAL DUE	\$ 7,960.85

### RAMON BERUMEN

1976	\$ 4,362.29
1977	2,940.64
1978	5,161.40
1979	4,431.51
1980	3,023.02
1981	598.40
Expenses	<u>1,305.00</u>
TOTAL DUE	\$21,822.26

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<sup>1/</sup> \$100.00 bonus received by Mr. Bermea in 1979 deducted from backpay due.

<sup>2/</sup> \$704.00 bonus received by Mr. Bermea in 1980 deducted from backpay due.

APPENDIX A

LORENZO MARTINEZ CHAVARRIA

1976	\$ 3,528.46
1977	3,752.17
1978	4,740.37
1979	3,619.62
1980	5,293.31
1981	210.05
Expenses	<u>605.00</u>
TOTAL DUE	\$21,748.98

ANDRES MONTOYA

1976	\$ 5,923.79
1977	4,126.48
1978	4,836.01
1979	7,803.85
1980	7,055.52
Expenses	<u>208.00</u>
TOTAL DUE	\$29,953.65

APPENDIX A

FRANCISCO ORTIZ

1976	\$ 6,353.77
1977	4,331.49
1978	4,533.04
1979	3,975.81
1980	3,719.43
1981	686.39
Expenses	<u>745.00</u>
TOTAL DUE	\$24,344.93

AGUSTIN RODRIGUEZ

1976	\$ 2,297.02
1977	2,957.78
1978	2,016.70
1979	1,189.10
1980	2,657.61
1981	126.25
Expenses	<u>1,520.00</u>
TOTAL DUE	\$12,764.46

APPENDIX A

HERLINDA AVITUA

1976	\$ 1,310.24
1977	5,145.14
1978	3,020.95
1979	4,467.18
1980	4,161.44
Expenses	<u>1,770.00</u>
TOTAL DUE	\$19,874.95

ELENA SOLANO

1976	\$ 1,234.40
1977	3,898.09
1978	3,587.03
1979	6,525.70
1980	4,113.60
Expenses	<u>2,211.00</u>
TOTAL DUE	\$21,569.82

## APPENDIX A

### JESUS SOLANO

1976	\$ 1,380.55
1977	4,249.81
1978	4,332.86
1979	4,930.43
1980	4,985.00
Expenses	<u>2,486.00</u>
TOTAL DUE	\$22,364.65

### MIGUEL LOPEZ CHAVEZ

1976	\$ 7,866.19
1977	6,686.01
1978	3,330.98
1979	4,372.84
1980	6,061.60
1981	-0-
Expenses	<u>1,441.00</u>
TOTAL DUE	\$29,758.62

## APPENDIX A

### RAUL JIMENEZ

1976	\$ 4,969.19
1977	3,373.01
1978	2,546.92
1979	2,886.07
1980	5,158.89
1981	3,742.90
Expenses	<u>5,305.00</u>
TOTAL DUE	\$27,981.98

### ISIDORO ANDRADE PRIETO

1976	\$ 4,536.10
1977	2,150.82
1978	5,275.63
1979	6,032.62
1980	5,350.80
1981	5,279.45
1982	1,230.85
Expenses	<u>1,125.00</u>
TOTAL DUE	\$30,981.27

APPENDIX A

ABELINO ORTEGA

1976	\$ 7,366.48
1977	10,141.00
1978	10,210.71
1979	11,095.21
1980	2,135.88
Expenses	<u>637.12</u>
TOTAL DUE	\$ 41,586.40

## CASE SUMMARY

ABATTI FARMS, INC.,  
ABATTI PRODUCE, INC.

9 ALRB No. 59  
Case No. 75-CE-60-E(R)  
(6 ALRB No. 57)  
(5 ALRB No. 34)

## ALJ DECISION

This is the backpay compliance portion of 5 ALRB No. 34. Thirteen discriminatees are entitled to receive backpay. The ALJ adopted the following backpay formulas as utilized by the General Counsel: (1) a crew-averaging method for the shoveling crew; (2) a crew-averaging method for the weed and thin crew, except no gross backpay accrued when fewer than three weed and thin crew members worked; (3) a crew-averaging method for sprinklers, except no gross backpay accrued when fewer than six sprinklers worked; (4) a representative employee for the irrigator and (5) a representative employee for the tractor driver. The ALJ calculated backpay on a daily basis except where a discriminatee found full time year-round employment. The calculations of net backpay for two discriminatees who found full time year-round employment were done on a quarterly basis. The ALJ reasoned that with full time year-round employment, the two discriminatees were relieved of seeking employment on a daily basis.

The ALJ found that he had no authority to adjust the interest rate from the seven percent per annum ordered by the Board in 5 ALRB No. 34 and 6 ALRB No. 57 and enforced by the Court of Appeal.

All of the 13 discriminatees made reasonably diligent efforts to seek interim employment and none obtained substantially equivalent employment with an interim employer. Two shoveler discriminatees who returned to work for Respondent were not reinstated to substantially equivalent jobs in the melon crew, prior to being offered reinstatement to their former shovelers jobs.

The ALJ rejected Respondent's argument that one of the discriminatees subjectively considered his employment with Freedman and Company to be substantially equivalent to his employment with Respondent and waived his right to reinstatement.

The annual bonuses, vacation pay and company paid housing received by one discriminatee from an interim employer were deducted from his gross backpay as interim earnings. Strike benefits received by two discriminatees were not interim earnings. Two discriminatees suffered interim employment-related injuries during the backpay period and, because the injuries related to their interim employment, no gross backpay was deducted for those periods of disability. Two discriminatees made reasonably diligent efforts to find interim employment although they



participated in a strike against California Coastal Farms. A discriminatee justifiably quit her interim job because of the treatment she received from other employees and did not willfully sustain a loss of interim earnings.

Respondent sent a certified letter, which was returned undelivered, and two postcards to a discriminatee offering him reinstatement to his former job. These efforts were insufficient to terminate Respondent's backpay liability in light of the discriminatees' testimony that he did not receive the postcards and Respondent made no other effort to contact the discriminatee. Respondent's backpay liability ended when the discriminatee began working in his former job for Respondent.

One discriminatee suffered a \$600 capitol loss when he was forced to sell his car two months after he purchased it in order to put the cash received from the sale in the bank for the purpose of obtaining a loan to pay for the medical expenses of his wife's pregnancy. This economic loss was a result of Respondent's discrimination and thus the discriminatee shall be reimbursed for the loss. The General Counsel failed to show that the discriminatee suffered any net loss from a purchase of a mobile home or a move from the Imperial Valley to Mexicali.

Respondent offered temporary employment to a discriminatee which he refused. This offer was not a bona fide offer of reinstatement and was insufficient to terminate Respondent's backpay liability. However, the discriminatee's statement to Respondent's agent, that he could not accept an offer for temporary employment because he had his own business, was sufficient to constitute a waiver of his right to reinstatement and terminate Respondent's backpay liability.

Based on a medical doctor's report that, when he examined the discriminatee in April 1980, he was incapable of performing agricultural labor, the ALJ terminated Respondent's backpay liability on January 1, 1980. The ALJ found that a discriminatee's filing of a workers' compensation claim was insufficient to establish his disability and did not toll Respondent's backpay liability.

#### BOARD DECISION

The Board affirmed the ALJ's use of the backpay formulas as utilized by the General Counsel. The formulas are reasonable and Respondent did not present more appropriate formulas. The Board affirmed the ALJ's use of daily calculations but rejected his use of quarterly calculations for two discriminatees who had obtained full time year-round employment. Interest on the backpay award of each discriminatee shall be computed quarterly at a rate of seven percent per annum. The Board has no authority to modify its Order where, as here, the Order has been enforced by the Court of Appeal.

The Board affirmed the ALJ's findings that none of the discriminatees had obtained substantially equivalent employment. A discriminatee accrues gross backpay daily which can be offset by daily interim earnings, but the offset shall not exceed the gross backpay for that day.

The Board found that a discriminatee is entitled to reinstatement, even if he or she obtains substantially equivalent employment with another employer, until such time as he or she refuses a bona fide offer of reinstatement or waives his or her right to reinstatement.

The burden is on Respondent to prove its affirmative defenses, e.g. disability, willful loss of interim earnings, unavailability for work. The disability of a discriminatee was established by a medical doctor's report which stated that after examining the discriminatee it was his opinion that the discriminatee was incapable of performing agricultural labor. The disability was established as of the date of the examination; there was insufficient evidence of disability prior to that date.

\* \* \*

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

\* \* \*

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE BY MAIL  
(1013a, 2015.5 C.C.P.)

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 915 Capitol Mall, 3rd Floor, Sacramento, CA 95814.

On October 7, 1983 I served the within Decision - 9 ALRB 59

Abatti Farms, Inc., Abatti Produce, Inc., 75-CE-60-E(R), et.al.  
(6 ALRB No. 57)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as follows:

CERTIFIED MAIL

Merrill F. Storms, Jr.  
Gray, Cary, Ames & Frye  
Post Office Box 2416  
1221 State Street  
El Centro, CA 92243

Browning E. Marean  
Gray, Cary, Ames & Frye  
2100 Union Bank Building  
San Diego, CA 92101

United Farm Workers  
Legal Office  
Post Office Box 30  
Keene, CA 93531

REGULAR MAIL

Abatti Farms, Inc.  
Abatti Produce, Inc.  
Post Office Box 464  
El Centro, CA 92243

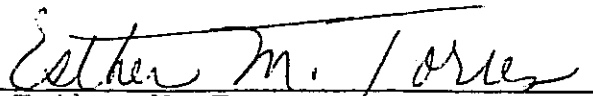
United Farm Workers  
Post Office Box 1940  
Calexico, CA 92231

El Centro ALRB Regional Office  
319 Waterman Avenue  
El Centro, CA 92243

HAND DELIVERED

General Counsel (2)

Executed on October 7, 1983 at Sacramento, California.  
I certify (or declare), under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Esther M. Torres  
Secretary to the Board

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	Case Nos. 75-CE-60-E(R), et al.
	)	
ABATTI FARMS, INC.,	)	6 ALRB No. 57
ABATTI PRODUCE, INC.,	)	(5 ALRB No. 34)
	)	
Respondent,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	
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Appearances:

Darrell Lepkowsky,  
Jorge Vargas  
of El Centro, California  
for the General Counsel

Browning E. Marean, Esq.,  
Guillermo Marrero, Esq.  
of Gray, Cary, Ames & Frye  
of San Diego, California  
for the Respondent

Clare M. McGinnis  
of Keene, California  
for the Charging Party

SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE LAW OFFICER

STATEMENT OF THE CASE

STUART A. WEIN, Administrative Law Officer:

On 9 May 1979, the Agricultural Labor Relations Board issued a Decision and Order in the above-captioned proceeding (5 ALRB No. 34) finding, inter alia, that Respondent had discriminatorily laid off, failed to offer available work, and subsequently refused to rehire shovelers Ramon Berumen, Reynaldo Bermea, Francisco Ortiz, Lorenzo Chavarria, Andres Montoya and Augustin Rodriguez in violation of section 1153(a) and (c) of the Agricultural Labor Relations Act.<sup>1/</sup> Respondent discriminatorily failed to offer sprinklers Miguel Chavez Lopez, Jr., and Raul Jimenez other work opportunities at the time of their layoff and subsequently refused to rehire them. Respondent discharged irrigator Abelino Ortega and tractor driver Isidoro Andrade Prieto because of their UFW activities and sympathies in violation of Labor Code section 1153(c) and (a). Jesus Solano, Elena Solano and Herlinda Avitua were discriminatorily laid off from their work in Respondent's weeding and thinning crew. The Board directed that Respondent offer reinstatement and reimbursement to these employees for any loss of pay or other economic losses suffered as a result of these violations.<sup>2/</sup>

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1. Hereinafter referred to as the "Act".

2. On 16 October 1980, the Board issued a Supplementary Decision and revised Order (6 ALRB No. 57) pursuant to decision of the Court of Appeal for the Fourth Appellate District (Abatti Farms, Inc. v. Agricultural Labor Relations Board, 107 Cal.App.3d 317 (1980), hg. den. August 28, 1980) modifying the previous order of the Board with respect to matters not related to the instant proceeding.

The parties were unable to agree on the amount of backpay due any of the discriminatees, and on 25 February 1982, the Regional Director of the ALRB issued a backpay specification. The Respondent filed an Answer on 4 March 1982. A First Amended Backpay Specifications (sic) was issued by the Regional Director on 29 March 1982, and an Answer was filed by Respondent on 8 April 1982.<sup>3/</sup>

A hearing was held before me in El Centro, California on April 28, 29, 30 and May 3, 4, 5, 6, and 10, 1982. All parties were given a full opportunity to participate in the hearing, and all filed post-hearing briefs.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

#### FINDINGS

##### I. Background

The employees involved in the backpay proceeding represent steady workers employed virtually year-round in the care of Respondent's crops during the growing stages. These steady employees were organized into five crews including tractor drivers, irrigators, shovelers, sprinklers, and weeders and thinners.

The shovel crew varied in size from 8 to 17 employees depending upon the time of year and Respondent's work needs.

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3. General Counsel introduced a Second Amended Backpay Specification (General Counsel Exhibit 2) at the first day of the hearing which excluded offsets for interim earnings. General Counsel and Charging Party, however, have relied upon the net backpay calculations contained in the First Amended Backpay Specification (ALO Exhibit 1) with minor mathematical corrections for their respective positions as to the amount owed each discriminatee. See briefs of counsel.

Because virtually all of the shovelers worked throughout the year in that crew or were transferred to other crews with the exception of the six named discriminatees, the Board found that Respondent violated Labor Code section 1153(c) and (a) by its layoff, failure to offer work in other crews, and subsequent refusal to rehire. All six discriminatees were laid off during the week of 21 January 1976. (5 ALRB No. 34, pp. 16-20.)

The sprinkler crews were divided into three groups of approximately four employees each. The first crew worked year-round; the second worked about 11 months a year. The third crew -- the "camintero" or "roadway worker" crew worked only from September through January. The two discriminatees -- Miguel Lopez Chavez, Jr., and Raul Jimenez -- were hired to work in the camintero crew in September 1975 and were laid off on 21 January 1976. As sprinkler employees were typically given work in onion loading, truck driving, in the cantaloupe or rapini harvests, the Board concluded that Respondent violated Labor Code section 1153(c) and (a) by failing to offer Chavez and Jimenez other work opportunities at the time of their layoff and in subsequently refusing to rehire them. (5 ALRB No. 34, pp. 20-23.)

The irrigator crew employed some 38 employees, 80% of whom worked year-round. During slack seasons, irrigators were sent to work in the shovel crew or assigned fewer hours of work. Discriminatee Abelino Ortega had worked as an irrigator for Respondent since 1973 and was terminated on 27 January 1976. (5 ALRB No. 34, pp. 23-25.)

Isidoro Andrade Prieto worked continuously for Respondent

as a tractor driver from August 1974 until January 24, 1976, the date of his discharge. His longest layoff was for four days. There were some 30 to 40 tractor drivers in Prieto's crew. During the slack season, some were referred to truck driving work, and at least one was sent to work in the shovel crew. (5 ALRB No. 34, pp. 25-28.)

Jesus Solano, Elena Solano, and Herlinda Avitua worked in supervisor Jose Rios' weeding and thinning crew which was formed in October and November of 1975. All were laid off on January 31, 1976. Elena Solano had worked for Respondent in another crew for four years, and Jesus Solano and Herlinda Avitua had also worked for Respondent for some time before joining the weeding and thinning crew. (5 ALRB No. 34, pp. 28-31.)

## II. Issues

The present dispute involves the amount of back pay owed each of the discriminatees. By way of pleadings, answer, stipulation, or references in post-hearing briefs, the parties have placed at issue the following:<sup>4/</sup>

A. Methodology of net calculations -- e.g., whether back pay due should be calculated on a daily basis as contended by General Counsel and Charging Party, or on a quarterly or some other (weekly) basis as recommended by Respondent.

B. Methodology of gross back pay calculations. General Counsel has utilized a crew-averaging method for the shoveling crew;

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4. All parties have included their revised calculations in post-hearing briefs, and the differences contained therein constitute the focal point of the supplemental decision.



a "representative" employee approach in the cases of irrigator Abelino Ortega and tractor driver Isidoro Andrade Prieto (Severino Piceño and Cirilio Robles); a modified crew-averaging method for sprinklers Miguel Chavez Lopez, Jr. and Raul Jimenez, with gross pay excluded if fewer than six sprinkler workers were indicated on the Respondent payroll for a given workday; and a crew-averaging method for weed and thin crew members Herlinda Avitua, Jesus Solano, and Elana Solano, with gross pay deleted when fewer than three crew members worked on an indicated workday.

Respondent has contended that General Counsel's crew-averaging method for the sprinkler workers was erroneous because of the low seniority of Mssrs. Jimenez and Lopez. It suggests exclusion of all gross back pay calculations for periods when eight or fewer sprinkler workers were employed with Respondent. It further objected to the representative employee approach in tractor driver Andrade's case, rather recommending a crew-averaging method. No other dispute was raised, or alternative suggested by Respondent regarding these gross calculations, except insofar as Respondent contended that the calculations should have been made on an other than daily basis.<sup>5/</sup>

C. The applicable post-judgment interest rate. By motion submitted on the final date of the the hearing, the General Counsel

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5. That is, Respondent's gross calculations are done on a weekly averaging basis consistent with Respondent's rejection of the daily approach. Apart from the dispute with respect to the daily versus quarterly issue and calculation of net back pay owing, however, Respondent did not contest either the gross pay methodology and/or calculations with respect to the shovel crew, weed and thin crew, and irrigator crew, except where specifically indicated hereinafter.

has contended that an adjustment to the award be made to account for inflation. Respondent opposes the motion on both procedural (timeliness) and substantive grounds.

D. Individual cases. Respondent has raised various defenses to the claims concerning individual discriminatees on the basis of failure to mitigate damages; periods of unavailability due to absence from the country, illness, injury or disability; acceptance of substantially equivalent employment; and unjustified termination or rejection of interim employment. Respondent also requests a setoff for the discriminatees' receipt of interim bonuses, overtime earnings, and strike benefits. Additionally, at issue are the effective dates of various offers of reinstatement, and the reasonableness and appropriateness of expense claims of several of the discriminatees.

Following initial general discussion of the methodologies utilized by General Counsel, I will set forth a discussion of the factual findings and legal analysis pertaining to each discriminatee, organized by crew -- shoveler, sprinkler, thin and weed, irrigation, and tractor driver. Appendices are attached to reflect the total amount due each discriminatee.

III. Methodology of Back Pay Calculations ("Dailies" v. "Monthlies")

The Board has repeatedly affirmed that "the policy of the Act reflected in a back pay order is to restore the discriminatee to the same position he or she would have enjoyed had there been no discrimination." Arnaudo Brothers (August 31, 1981) 7 ALRB No. 25 rev. den. Third Appellate District, March 18, 1982, citing Maggio-Tostado (June 15, 1978) 4 ALRB No. 36; N.L.R.B. v. Robert

Haus Co. (6th Cir. 1968) 403 F.2d 979 [69 LRRM 2730]; N.L.R.B. v. United States Air Conditioning Corp. (6th Cir. (1964) 366 F.2d 275 [57 LRRM 2068]. In Sunnyside Nurseries, Inc. (May 20, 1977) 3 ALRB No. 42, enf. den. in part; Sunnyside Nurseries, Inc. v. Agricultural Labor Relations Board (1979) 93 Cal.App.3d 922, the Board set forth a formula calculating back pay on a daily basis. It has since authorized the calculation of back pay to be made on a weekly basis, or indeed, by any method that is practicable, equitable, and in accordance with the policy of the Act. Butte View Farms (November 8, 1978) 4 ALRB No. 90, aff'd Butte View Farms v. Agricultural Labor Relations Board (1979) 95 Cal.App.3d 961; Maggio-Tostado, supra.

In the instant case, General Counsel and Charging Party have contended that back pay owed to the discriminatees should be calculated on a daily basis. Daily gross back pay figures were derived from Respondent's (weekly) payroll records which were averaged on a daily basis and offset by interim earnings which were also averaged on a daily basis (GCX 2, ALOX 1, 2).<sup>6/</sup> Respondent suggests that backpay computation on a daily basis is inappropriate in this case because (1) NLRB precedent (F. W. Woolworth Co. (1950) 90 NLRB 289 [26 LRRM 1185]) requires quarterly calculations; and (2) the underlying wage data utilized by General Counsel in preparing the backpay specification is insufficient to make daily calculations.

While Labor Code section 1148 mandates that the Board

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6. "GCX" refers to General Counsel exhibits; "RX" refers to Respondent exhibits; "ALOX" refers to Administrative Law Officer exhibits.

follow the applicable precedent of the National Labor Relations Act, the Woolworth quarterly formula was rejected for the Sunnyside daily calculations as the "most simple and just method of awarding backpay in the agricultural context". (3 ALRB No. 42 at pp. 2-3, (1979) 93 Cal.App.3d 922). I am bound to follow the Board's rule in this regard. The rule is particularly appropriate in the instant proceeding insofar as the Board's utilization of the daily calculation is based on the seasonality of agricultural employment, as well as on the daily basis of obtaining work most frequently encountered by agricultural workers.

Here, each of the 13 discriminatees described their efforts to find work on a day-to-day basis in the Calexico-El Centro area for at least some period of time following their last day of work with Respondent. All had been employed on a full-time basis at the time of the discriminatory conduct, or at least were entitled to consideration as steady employees pursuant to the Board's order in 5 ALRB No. 34. Only Mssrs. Rodriguez and Bermea found full-time (year-round) interim employment. I am thus inclined to follow the daily calculations provided by General Counsel with respect to eleven of the discriminatees, and utilize Respondent's quarterly calculations only for those two latter employees for those periods during which they found full-time (year-round) interim employment.

With respect to Respondent's contention that backpay should be computed in accordance with the underlying interim wage data, I find nothing unreasonable about General Counsel's daily averaging of the available interim information. General Counsel's backpay specification (GCX 2, ALOX 1) seems particularly geared to giving

Respondent full credit for interim earnings by matching daily interim earnings with gross pay daily work. General Counsel has calculated gross earnings on the basis of a six-day week (with Sunday off). Interim earning averages have also been adjusted to reflect this basic work schedule when no other information was available.<sup>7/</sup>

I reject Respondent's suggestion that either quarterly calculations be utilized "across-the-board" or that calculations be individualized according to each discriminatee's particular interim earnings for the following reasons: Neither approach takes into account the particular nature of agricultural employment or the plight of these individuals who were deprived of full-time work by virtue of Respondent's discriminatory conduct. Insofar as this conduct necessitated daily searches for work, and acceptance of employment on a daily, weekly, or some other seasonal basis, there is ample reason to apply the daily formula. It is not necessarily the method by which the discriminatee received a particular interim pay check which should be determinative of the ultimate calculations in this regard. Rather, in an effort to make whole each discriminatee, and not penalize the Respondent, loss of pay has been determined by multiplying the number of days the employee was out of work by the amount the employee would have earned each day (averaged from weekly payroll records). If during any day/period the employee was employed elsewhere, the net earning of that period (either daily

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7. In the few instances where the General Counsel's "interim-averaging" calculations do not reflect the gross earnings schedule, I have made adjustments to give Respondent full credit therefor (e.g., Appendices A-1 through A-6 in the case of Mr. Chavarria).

or daily average applied to Respondent's 60-hour week) has been subtracted from the amount the employee would have earned with Respondent for that day/period only. (See J & L Farms (August 12, 1980) 6 ALRB No. 43.)

IV. Methodology of Gross Backpay Calculations:

Apart from its objections concerning the daily versus weekly calculation of the gross backpay, Respondent takes no issue with General Counsel's calculations concerning the shoveler crew (daily averaging), thinning and weeding crew (daily averaging), and irrigators (comparable employee). Thus, there is no controversy as to the calculations (except where noted infra in individual cases) derived once the daily approach has been selected. Respondent does dispute General Counsel's calculations of the gross pay due the discriminatees in the sprinkler crew (Raul Jiminez and Miguel Lopez Chavez, Jr.) -- the crew-averaging methodology with calculation of money due only when more than five sprinklers worked on a given day. It also opposes the calculation regarding tractor driver Isidoro Andrade Prieto -- the comparable employee method.

The ALRB has utilized the NLRB four basic formulas in computing backpay awards. See O.P. Murphy Produce Co., Inc. (August 3, 1982) 8 ALRB No. 54; NLRB Casehandling Manual (Part Three) Compliance Proceedings, August, 1977, sections 10538-10544; ALRB Casehandling Manual, Computation of Backpay.) There are many variations of the four basic formulas: (1) use of discriminatee's average hours of work prior to the unfair labor practice; (2) use of discriminatee's average earnings prior to the unfair labor practice; (3) use of average earnings or hours of a representative or

comparable employee who worked in a position similar to that of a discriminatee prior to the unfair labor practice and during the backpay period; (4) use of earnings or hours of a replacement employee or employees. Recently, the Board has suggested that "[t]he formula utilized by the General Counsel must not be arbitrary and must be reasonably calculated to represent the gross amount the discriminatee(s) would have earned during the backpay period, absent discrimination." (O. P. Murphy Produce Company, Inc. (supra, p. 4.)

A. Tractor Drivers (Isidoro Andrade Prieto)

Respondent contends that General Counsel should have used a "crew average" rather than a "comparable employee" approach for determining gross backpay in Mr. Andrade's case. Respondent's chief objection to this usage was that Mr. Andrade's seniority was significantly less than that of comparable employee Cirilio Robles. Thus, respondent's supervisor, Albert Studer, testified that while Mr. Andrade would be ranked (by seniority) in the middle of the approximately 50 tractor drivers in his crew, Mr. Robles would rank tenth. However, on further examination, Mr. Studer conceded that some 80% of Respondent's tractor drivers worked full time without seasonal layoff. (R.T. Vol. VII, p. 55, ll. 20-28, p. 56, ll. 1-5, p. 57, ll. 21-26). Since Robles as well as Andrade were among the 80% who could expect full-time work, and there is uncontradicted testimony that both Andrade and Robles performed similar tasks (R.T. Vol. I, p. 36, ll. 6-19), I find no error in the General Counsel's utilization of one of the four basic NLRB formulas in the instant case.

B. Sprinkler Crew (Raul Jimenez, Miguel Chavez Lopez, Jr.)

Respondent contends that according to Mr. Jimenez' and Mr. Chavez' seniority at Abatti, gross wages should have accrued only when 9 or more sprinklers were employed, as opposed to the calculations of General Counsel which included gross backpay only if more than five sprinklers worked on a particular day. The factual basis for this position rests upon the testimony of the discriminatees that they were the lowest in seniority of the three sprinkler crews, and that there were two full crews of five workers each with higher seniority at the time of their layoffs. On the other hand, ALRB field examiner Richard Delgado referred to a seniority list of sprinkler workers provided by Respondent (GCX 22) in justifying his methodology of calculation. The exhibit reflects that only five sprinkler workers had greater seniority than the two discriminatees as of the date the information was supplied (December 9, 1981).

Furthermore, as the Board has found discriminatory conduct in both the failure to rehire, as well as Respondent's refusal to offer work in other crews for Mssrs. Jiminez and Chavez, I am not convinced that General Counsel was compelled to make even the "seniority adjustment" that it made. That is, the Board has already rejected Respondent's rationale that there was no work available at the time of their layoffs. Respondent personnel previously testified that sprinkler workers would work in other crews at the end of the sprinkler season (see 5 ALRB No. 34, pp. 20-23). All 14 sprinkler workers could thus reasonably expect full-time work on a year-round basis. General Counsel's adjustment -- in light of the information provided by Respondent, as well as the original finding



of liability by the Board -- does not seem unreasonable and/or arbitrary, and I shall therefore incorporate it into the final calculations.<sup>8/</sup>

V. Interest Rate Calculation

In Lu-Ette Farms, Inc., (August 18, 1982) 8 ALRB No. 55, this Board has determined that the decision of the National Labor Relations Board in Florida Steel Corporation (1977) 231 NLRB 651 [96 LRRM 1070] is applicable NLRA precedent under Labor Code section 1148, and has been adopted for the computation of interest payable on monetary awards under the ALRA. As this "new interest rate" is to be applied prospectively only (see Lu-Ette, supra, p. 7, footnote 3), the 20% rate shall apply from 18 August 1982 until the January 1, 1983 adjustment. The old rate of 7% applies prior thereto.

However, the Lu-Ette decision makes no reference to instances where the Board has ordered payment of a particular interest rate, which order has been enforced by a court of appeal. Here, the Board has ordered 7% interest in 5 ALRB No. 34. Said order was recommended for enforcement in 107 Cal.App.3d 317. The revised order (6 ALRB No. 57) also formulates an interest rate of 7% per annum. There is ample NLRB precedent supportive of Respondent's

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8. This is not to suggest that Respondent's approach is unreasonable, especially in light of the testimony of the discriminatees. As suggested in Butte View Farms v. A.L.R.B. (1st Dist. 1979) 95 Cal.App.3d 961 [157 Cal.Rptr. 476], citing Bagel Bakers Council of Greater New York v. N.L.R.B. (2d Cir. 1977) 555 F.2d 304, 305, ". . . A backpay award is only an approximation, necessitated by the employer's wrongful conduct. In any case, there may be several equally valid methods of computation, each yielding a somewhat different result . . . the fact that the Board necessarily chose to proceed by one method rather than another hardly makes out a case of abuse of discretion."

position that a "new" interest rate is not applicable in cases in which prior orders of the Board have provided for different rates and have been enforced by a court of appeal. See S. E. Nichols of Ohio, Inc. (1981) 258 NLRB No. 2; Pierre Pellaton Enterprises, Inc. (1979) 239 NLRB No. 211; Florida Steel Corporation (1978) 234 NLRB No. 1089. I therefore recommend that the applicable interest rate remain at 7% per annum.

VI. Individual Discriminatees

A. Shovelers

(1) Lorenzo Chavarria

(a) Facts

The backpay period for Lorenzo Chavarria commenced on 23 January 1976 -- the day of his termination. Chavarria described his efforts to seek work by going to "El Hoyo" in Calexico on a daily basis, where all the labor contractors would get together and choose people for work. Chavarria theorized that he was unable to find full-time employment because of his association with the UFW. He testified to obtaining work with labor contractors in Woodland, California, for approximately five weeks in the fall of 1976 and 1977, and worked in the grape pruning and thinning for David Freedman & Company/Travertine Vineyards Associates from winter through fall for each year from 1976 through 1981.

When questioned as to when he decided not to return to work for respondent, the discriminatee testified that he chose not to return upon his termination. Upon further examination, Mr. Chavarria clarified that he decided not to return to work for Abatti because (1) he was angry at having been terminated because of his

union activities; and (2) foreman Ramon Gonzalez told him approximately one week after he was terminated that he could not return to Abatti until further notified. He also indicated that he made this decision once he had secured work with David Freedman.

The expense sheet submitted by General Counsel on Mr. Chavarria's behalf (as amended) listed various travel expenses in seeking work totaling some \$605.00 and itemized in Appendices A-1 through A-6 (GCX 4).

(b) Analysis and Conclusions

The parties stipulated that the maximum backpay liability period for Mr. Chavarria ran from 23 January 1976 to 25 January 1981. Respondent further stipulated that Mr. Chavarria was reasonably diligent in seeking interim employment. (R.T. Vol II, p. 137, ll. 11-28, p. 138, ll. 1-2.)

Respondent contends that Mr. Chavarria obtained substantially equivalent employment with David Freedman Company/Travertine Vineyards Associates commencing in 1976, and therefore is not entitled to backpay or expenses for the balance of the backpay period. Respondent refers to NLRB precedent for the proposition that backpay is to be tolled as of the time substantially equivalent employment is offered or secured. (See Respondent's brief, p. 17, citing Bashore Meat Products, Inc. (1975) 218 NLRB 528, 530; Bonnie Lass Knitting Mills, Inc. (1960) 126 NLRB 1396.) It points to Mr. Chavarria's testimony that once he was employed by Freedman & Company, he decided not to return to Abatti Farms to suggest that Chavarria subjectively considered his interim job substantially equivalent to his employment with Respondent.

The evidence regarding Mr. Chavarria's interim wages, however, suggests that he had not obtained substantially equivalent employment prior to Respondent's offer of reinstatement. Apart from the fact that he was no longer a shoveler, but worked in thinning and pruning of grapes, it is clear that his net earnings with David Freedman/Travertine were significantly less than that which he would have earned at Respondent. (See ALOX 1 and Appendices A-1 through A-6.) Thus, Abatti gross earnings for April, May, and June 1976, for example, totaled some \$1,650. At David Freedman, he earned approximately \$900, or some 75% less. Moreover, the work with David Freedman left Mr. Chavarria unemployed for several months each year (October through December; May-June), while Chavarria could have expected full-time (year-round) work at Abatti had there been no discriminatory conduct.<sup>9/</sup>

Nor am I persuaded by the suggestion that Mr. Chavarria's testimony regarding his state of mind concerning his return to Abatti, juxtaposed with his ultimate rejection of Respondent's offer of reinstatement, suggests substantially equivalent employment which would toll the backpay period. There is no evidence that Chavarria articulated to Respondent or any Board agent, or any party for that matter, his subjective state of mind prior to declining the offer of reinstatement. As he made no final choice regarding his ultimate status until Respondent offered reemployment, I cannot find any

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9. David Freedman & Company did provide housing benefits, but no evidence was presented as to what monetary savings that provided Mr. Chavarria.

waiver of this right by this previous subjective state of mind.<sup>10/</sup>  
(East Texas Steel (1956) 116 NLRB 1336, enf'd (5th Cir. 1958) 255 F.2d 284). A contrary result would reward the most egregious conduct. That is, the more outrageous the employer's discriminatory actions, and thus the greater subjective reluctance on the part of the discriminatee to return, the more likely that backpay liability would be tolled. I do not perceive the Board's remedial order to require such a result. And the NLRB has held there to be no tolling of the backpay period until the date of a valid offer of reinstatement when wages are significantly lower than those earned in the previous position with the employer. (Teamsters Local 555, An Affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (1981) 257 NLRB 6.)

I do not read the authority cited by Respondent to stand for the proposition that backpay liability is generally tolled when the discriminatee has secured substantially equivalent employment. Both Bashore and Bonnie Lass Knitting Mills, Inc. refer to remedial orders issued at the liability stage of proceedings imposed in situations where the respondent employer had threatened to or did in fact discontinue its operations. Furthermore, the long-standing rule of the NLRB has suggested that the acquisition of substantially equivalent employment does not terminate the Respondent's obligations of reinstatement and backpay. Phelps Dodge Corp. v.

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10. Based on the guidelines set forth in the NLRB Casehandling Manual (10740.6, part 3), I permitted questions regarding Mr. Chavarria's state of mind prior to the offer of reinstatement. (See English Freight (1946) 67 NLRB 643.)

N.L.R.B. 313 U.S. 177, 192-197 (1941). I thus conclude that Mr. Chavarria is entitled to backpay for the entire period January 23, 1976 to January 25, 1981, as well as reimbursement for expenses incurred in seeking work. See Frudden Produce, Inc. (March 29, 1982) 8 ALRB No. 26.

(c) The Calculations

The net backpay has been calculated on a daily basis pursuant to General Counsel's first amended specification, with adjustments for mathematical errors (ALOX 1, 2), interim earnings reflected in RX 2 but not accounted for in the specification, and inclusion of expenses. Additionally, interim earnings at Woodland, California, (five weeks at \$3.15/hour for 8 hours a day) for the period October 18 through November 25, 1976, and November 1 through December 3, 1977, as the best approximation of the periods of Mr. Chavarria's interim employment, have also been incorporated into the calculations. (See Appendices A-1 through A-6.)<sup>11/</sup> Because of the volume of the calculations, monthly summaries of the daily computations are attached.

(2) Reynaldo Bermea

(a) Facts

The backpay period for Mr. Bermea commenced on 29 January 1976 -- the day of his termination -- and (maximally) ran through 29 January 1981. He looked for work in the Imperial Valley but could

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11. Although the exact time of employment and name of employer were not recalled by Mr. Chavarria, I find sufficient evidence in the record to allow an offset to Respondent for five weeks' interim wages at Woodland, California, during the fall periods of 1976 and 1977. I've included the calculations for those periods which had previously reflected no interim earnings.

not find it. He went to the ranches to seek employment and several times returned to Abatti to ask for his former job without success. After making several trips to Coachella, he obtained work with David Freedman and Company from 26 April through 13 May 1976, and 1 June through 31 July 1976. He also obtained work with contractor Mike Pasos (Pili Voz Ranch) between December 1976 and February 1977, pruning vineyards in Mendota, California, and earning approximately \$2.25 per hour for 9 hours per day, six days per week. On 28 February 1977, Mr. Bermea obtained work with V. C. Britton, in Firebaugh, California, irrigating at night. As of the date of the hearing, he was still employed at that location, having been sent to the mill and then to Mr. Britton's home as the personal gardener. As an elderly man not able to do much heavy work, Mr. Bermea declined Respondent's offer of reinstatement on 29 January 1982. In addition to his salary at V. C. Britton, Mr. Bermea has received various bonuses which are detailed in RX 2 (p. 876). He was also paid housing -- a savings of approximately \$40 per month over living expenses incurred when he was working in Calexico. He also received a three-week vacation around Christmas time every year at V. C. Britton. Finally, he claimed travel expenses of \$590 in seeking interim employment during 1976. (GCX 9.)

(b) Analysis and Conclusions

Although the information is not precise, I credit Mr. Bermea's recollection of the three month's interim wages at Pili Voz Ranch, at the rate of \$2.25/hour and 9 hours per day, six days a week. Accordingly, there should be an offset for this amount in the calculation of backpay due for the period December 1, 1976 through

28 February 1977. Additionally, I have included in the net pay calculations the bonuses and housing allotments Mr. Bermea received while at V.C. Britton as both are more akin to earnings and/or perquisites of interim employment than to gifts or winnings unrelated to services performed. (See NLRB Casehandling Manual, Part III, Section 10602.1; Empire Worsted Mills, 53 NLRB 683, 693 (1943) (legacy not deductible); but see I. Posner, Inc., 154 NLRB 202, 214-215 (1965) (savings from price of meals at cafeteria of interim employer not deductible).) I shall fix the value of the housing allotment at \$40 per month (RT Vol. IV, p. 80, ll. 8-9), with bonuses of \$100 in 1979 and \$704 in 1980. (RT Vol. IV, p. 82, ll. 1-21.)<sup>12/</sup>

Respondent suggests that Mr. Bermea obtained substantially equivalent employment with V. C. Britton since February 1977, because the gardening work was less strenuous than the work at Abatti, he received a comparable salary, and he declined reinstatement when offered same in 1981. For the reasons articulated with respect to Mr. Chavarria's situation, I reject the suggestion that all backpay liability should be tolled from 28 February 1977. Rather, the offer of reinstatement tolls the liability period. Insofar as there is a differential in the earnings, the discriminatee is entitled to his net backpay. (See Robert E. Cashdollar, Sr., dba Nelson Metal Fabricating (1982) 259 NLRB No. 141 [109 LRRM 1086].) However, I will follow Respondent's

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12. Since backpay liability was extinguished on 29 January 1981, there is no need to include the \$90 bonus received by Mr. Bermea in December, 1981.



suggestion and apply quarterly (Woolworth) earnings from 28 February 1977, consistent with the previous analysis regarding the daily versus quarterly calculations. That is, since Mr. Bermea was no longer subject to the insecurity of having to seek work on a daily basis, there is no compelling rationale to continue the daily calculations. Particularly where, as in this instance, the total interim earnings for each month are nearly equivalent to or greater than the gross earnings, I see no reason not to give Respondent full credit in this regard. The application of the daily calculations would do much more than make Mr. Bermea whole for the discrimination he previously suffered. I do not interpret the Board's rulings in this area to require such a result. (See Maggio-Tostado, supra.)

(c) The Calculations

The adjustment to General Counsel's daily calculations are contained in Appendixes B-1 through B-6. Additional interim earnings from Pili Voz Ranch are included. Also, a quarterly analysis is made from 28 February 1977, with adjustments for bonuses and housing allowance.

(3) Ramon Berumen

(a) Facts

Mr Berumen was unemployed between the date of his termination from Abatti (23 January 1976) until April 20, 1976, when he obtained work with Osterkamp/Newside doing various field tasks (in the cotton, onions and beets), earning approximately \$3.25 an hour for an eight hour day. He sought work in various places in the Imperial Valley -- Holtville, Heber, Calexico, etc., in grocery stores, with the government, and through labor contractors. From

1 October through 22 November 1976, Mr. Berumen worked at Imperial Delta Farms in the cotton and sugar beets earning approximately the same hourly wage he earned at Osterkamp for a six-day week. Although he was unemployed from 22 November 1976 through 31 December 1976, he always looked for work because his family needed his support.

In addition to working with Osterkamp/Newside in 1977, Mr. Berumen worked with O'Connell & Sons in the cotton receiving a weekly check for \$3.30 per hour for eight hours a day per six days per week. He denies any illness or incapacity from the period of 1976 to 1981, but did spend approximately 12 to 15 days visiting his family members in Mexico commencing on 22 April 1979.

Mr. Berumen was unemployed from approximately 8 August 1978 to 1 October 1978 but looked for work during this period. On 1 October he returned to Respondent's employ after meeting foreman Tomas Romero who suggested that he could work with him in the watermelons and crenshaw/cantaloupe. For Respondent, Mr. Berumen earned \$4.25 per hour for five to eight hours per day and was paid by weekly check. On the melon crew, he would weed with a hoe, lift the vines, and pick melons.

The parties stipulated that Jim House offered reinstatement to Mr. Berumen to his former job as a shoveler on 23 March 1981. Mr. Berumen declined said offer for the reason that he was "already familiar with the melons."

Finally, the discriminatee requested reimbursement for gasoline expenses while seeking interim employment of \$15.00 per week for some 87 weeks from 1976 through 1980 (GCX 14).

(b) Analysis and Conclusions

I have excluded the two-week period immediately following 22 April 1979 when Mr. Berumen was in the interior of Mexico visiting family, and thus unavailable for work. All parties have agreed to this exclusion (see NLRB Casehandling Manual, Part III, Section 10612).

The only other contention raised by Respondent is that Mr. Berumen obtained substantially equivalent employment upon his return to Respondent's melon crew on 1 October 1978. Respondent suggests that Berumen's unarticulated preference for the melons (which decision was subjectively made, not articulated, in February 1979) should toll the back pay liability. I disagree for the reasons articulated with respect to Mr. Chavarria and Mr. Bermea. I find it difficult to equate the shoveling work with the melon crew job where the former was full time and the latter was seasonal, where the former paid significantly more, and involved different tasks. Therefore, the date of offer of reinstatement -- 23 March 1981 -- should toll the back pay liability, and I will calculate Mr. Berumen's back pay from the period 23 January 1976 through 23 March 1981.

(c) The Calculations

I have relied upon General Counsel's daily calculations (ALOX 1) with adjustments made pursuant to the above-referenced exclusion for holiday travel. I have also relied upon the daily calculations, as the discriminatee did not obtain full-time (year-round) interim work at any time during the back pay liability period. See Appendices C-1 through C-6.

(4) Francisco Ortiz

(a) Facts

Mr. Ortiz was unemployed from January 24, 1976 through 10 April 1977. He detailed his efforts to look for work every morning (six days per week) by going to speak to contractors at 3:00 a.m. where the buses were parked at "El Hoyo" or the California Supermarket on Imperial Avenue in Calexico. He did not recall the names of the contractors or the companies from whom he sought work and denied looking for employment outside the Imperial Valley because he did not have his own car. He attributed his inability to find work to the fact that the labor contractors did not know him, as he had worked with Abatti from 1971 to 1976, soon after arriving from Hollister, California.

On 11 April 1977, Abatti foreman Tomas Romero asked Mr. Ortiz to lift the vines (watermelons) for which he was paid approximately \$4.55 per hour for four-to-eight hours per day. He continued with the watermelon crew until the season ended in the cutting (usually June or July of each year), with his duties including lifting vines, cutting watermelons, and loading the melons onto trucks. Mr. Ortiz "preferred" the shoveling work because it was year-round, and he had five children to support.

Mr. Ortiz testified to having spoken with Respondent's supervisor James House on 23 March 1981 wherein he was offered work in the shoveling crew. Mr. Ortiz allegedly asked whether he could take that job and also work in the watermelons during the cutting season. Mr. House indicated his agreement. However, when Mr. Ortiz went to speak to foreman Ramon Gonzalez to return to his former

shoveling job, Gonzalez stated that he had no such orders, and Ortiz remained in the melon crew.

Mr. Ortiz denied any illness or incapacity or absence from the country during the period 1976-1981. He claimed a total of \$745.00 for expenses (gasoline) incurred in seeking interim work.

For the Respondent, former general manager James House described a conversation he had with Mr. Berumen and Mr. Ortiz in January or February 1981, in which House offered them the opportunity to change crews and return to their old shoveling jobs. House said the conversation took place on Field P-9 or P-10 southeast of Holtville. He told both Berumen and Ortiz that the State required the Respondent to offer them their old jobs back with Mr. Gonzalez' shovel crew. Both indicated that they wanted to stay in the watermelon crew because they were making more money. The conversation was conducted in Spanish. On cross-examination, House admitted that he did not speak fluent Spanish, but testified that he understood very clearly that both workers wished to stay in Romero's (watermelon) crew.

Respondent's shoveler foreman Ramon Gonzalez conceded that he had chatted occasionally with Mr. Ortiz since the latter had returned to work with Abatti, but denied any conversations regarding the possibility of Mr. Ortiz' reinstatement to the shovel crew, except on one occasion when House had indicated that perhaps both Ortiz and Berumen would return to Gonzalez' crew.

(b) Analysis and Conclusions

Charging Party (but not General Counsel) contends that a valid offer of reinstatement has yet to be made to discriminatee

Ortiz. (Charging Party Brief, pp. 5-6). I disagree. I credit the testimony of James House which was corroborated by discriminatee Ramon Berumen (R.T., Vol. VI, p. 49, ll. 1-25). While Mr. Ortiz seemed to be a sincere witness, who made genuine efforts to seek interim wages, his recollection of the sequence of conversations between himself and Gonzalez and House was somewhat murky. The discriminatee had a particularly difficult time in distinguishing 1976 conversations relating to the liability aspect of the litigation from the reinstatement discussions which occurred subsequently. In contrast, Mr. House's recollection of the reinstatement conversation was much more precise and corroborated by discriminatee Berumen (R.T. Vol. VI, p. 49, ll. 1-25). I further find it unlikely that Ortiz would not have reapproached House or a Board agent had he really sought and was denied return to his former shoveling job in 1981. I therefore find that the backpay liability period ends on 23 March 1981 in Mr. Ortiz' case.

I reject, however, Respondent's contention that Mr. Ortiz obtained substantially equivalent employment in March, 1977, for the reasons heretofore articulated in the cases of discriminatees Chavarria, Bermea, and Berumen. The watermelon work was seasonal; the shoveling work was not. The watermelon job involved weeding with a hoe, lifting vines, and picking melons; the shoveling work did not. The wage differential was significant as noted in ALOX 1. Nor should Mr. Ortiz' unarticulated contentment in the melon crew toll the backpay period until the offer of reinstatement to the shoveling crew was made. See discussion supra.

(c) The Calculations

I have followed the daily calculations provided by ALOX 1, including the claim for expenses, with minor mathematical adjustments as noted. See Appendices D-1 through D-6.

(5) Andres Montoya

(a) Facts

The parties stipulated that the maximum period of backpay liability runs from 2 February 1976 through 25 November 1980. Mr. Montoya testified about his efforts to seek interim work in Calexico by speaking to foremen and labor contractors on a daily basis. In addition to the interim employers listed in GCX 11, Montoya recalled having worked for a contractor by the name of Rodriguez for a three-to-four week period in November 1976 pitching watermelons. He had no recollection of ever having working for an employer by the name of Southwestern.

Mr. Montoya claimed medical expenses of approximately \$208.00 for treatment of a bronchial pneumonia condition he suffered in late 1976 through early 1977 (and covered by Respondent's medical insurance policy). He testified that this medical condition incapacitated him -- he was unable to look for work -- for a period of approximately three months. Mr. Montoya further testified to having been unable to work because of his rheumatism and back conditions for two-month periods in 1979 and 1980 (following his work pitching watermelons).

Montoya finally claimed expenses of approximately \$20.00 for a round-trip from Calexico to Stockton. He was unable to recall the year in which he took this trip, and stated that its primary

purpose was for vacation.

Mr. Montoya rejected Respondent's 25 November 1980 offer of reinstatement for the reason that he was ill. He testified that the rheumatism, back pains, and knee pains from which he was suffering at that time started in July 1980 following the watermelon season.

(b) Analysis and Conclusions

Respondent contends that it should incur no backpay liability for periods of Mr. Montoya's illness and vacation. General Counsel (and Charging Party) concede that the three-month disability period during which Mr. Montoya suffered from the flu should be deducted. As a payroll stub suggests that Mr. Montoya was working during the 1976-77 period in which the discriminatee claimed the illness, the gross pay deductions will be made for December 1977, and January, and February 1978 as suggested by General Counsel (see General Counsel's Brief, p. 57). As the medical expenses would have been covered under Respondent's medical insurance plan (GCX 21), I have included this sum in the total owing the discriminatee. Medline Industries, Inc. (1982) 261 NLRB No. 142 [110 LRRM 1280], citing Rice Lake Creamery Co. (1965) 151 NLRB 1113, 1129-1131, enf'd as modified in other respects, 365 F.2d 88 (D.C. Cir. 1966); Deena Artware, Incorporated (1958) 112 NLRB 371, 375, 382, aff'd 228 F.2d 871 (6th Cir. 1955).

Nor is there any dispute about the four-week vacation in 1978 during which time Mr. Montoya was unavailable for work. Accordingly, I will reduce the backpay award for this period (August), as well as exclude the \$20.00 round-trip expenses requested.



With respect to the rheumatism, back pains and knee pains suffered by Mr. Montoya, General Counsel suggests that backpay liability should not be limited where the illness is the direct result of the interim job (and therefore arguably would not have occurred had the discriminatee remained employed at the Respondent employer). (General Counsel's Brief , pp. 55-56, citing American Mfg. Co. of Texas (1967) 167 NLRB 520; M.F.A. Mill, Co. (1970) 170 NLRB 1079.

In the instant case, the 70-year-old discriminatee described his work pitching watermelons as follows: it involved picking up the watermelon and pitching it in the truck using one's hand (and an occasional beer for "strength"). If one was not alert, he would get a watermelon over the head. (R.T., Vol. V, p. 31, ll. 3-11). He suffered from rheumatism and back pains for the season immediately following the harvest. He also testified that he would go out to seek work in spite of these pains. There is no evidence Mr. Montoya suffered from these disabilities prior to the discriminatory conduct. Since the previous work involved laying pipes and establishing irrigation, it is plausible that Mr. Montoya's physical condition was aggravated by the new work. It would seem reasonable that back and knee pains in a 70-year-old man would be readily traceable to work in lifting and pitching watermelons, as distinguished from the flu and heart attacks which might generally be of unknown origin. Although Mr. Montoya might have suffered these disabilities absent his discharge, such an event is purely speculative, and I find the record insufficient to support that conclusion. I further credit Mr. Montoya's testimony that he

did seek work during the periods that he suffered from the interim-employment-related disability. I therefore recommend that Mr. Montoya be awarded backpay through 25 November 1980.

(c) Calculations

I have followed General Counsel's daily calculations (ALOX 1) with adjustments for periods of disability (flu) in 1977-78, and exclusion of vacation time (four weeks) in 1978. See Appendices E-1 through E-5.

(6) Augustin Rodriguez

(a) Facts

All parties stipulated that the backpay liability period for Mr. Rodriguez is from 20 January 1976 through 25 January 1981. He described his efforts to seek interim work as follows: He looked for work in Calexico on Imperial Avenue where the buses parked. He went by himself in his own car. He would get up at 2:00 a.m., and looked "everywhere in the Imperial Valley," naming employers Joe Maggio, Mario Saikhon, Danny Jackson, and a "Hindu" in Heber. Mr. Rodriguez was hospitalized for prostrate surgery in 1976, left his work at La Brucherie on 14 August, and did not return to the work force until January 1977. During the period 19 November 1977 through 20 January 1978, Rodriguez was laid off because of his low seniority when the fields were being plowed.

Since 21 January 1978, Rodriguez has been working full time (year-round) for Paul Fornasero, in the watermelon, alfalfa, lettuce and carrots in El Centro. He has irrigated, weeded, thinned, and cleaned ditches, being paid by weekly check, but does not recall the hourly rate or whether or not he received overtime.

Mr. Rodriguez testified that he received the notice of reinstatement from Respondent by postcard in January 1981. He was still with Fornasero at the time and did not accept the offer because it had taken so long for the Respondent to reinstate him. Had they written him sooner, he "would have been happy to return", but at that time it was too late (R.T., Vol. VI, p. 103, ll. 16-23). He suggested that he was not unhappy at Fornasero, but that at Abatti his work had been full time without layoff, and that therefore his work with the Respondent was preferable.

Rodriguez claimed various medical expenses totaling \$1,010.00 for unreimbursed costs incurred by his wife and adolescent son, which would have been covered under Abatti's medical plan. He also claimed gasoline expenses totaling \$550.00, for the periods he sought interim employment, the reasonableness of which has not been contested by Respondent.

(b) Analysis and Conclusions

General Counsel has conceded that there should be no backpay liability during the period of Mr. Rodriguez' prostrate illness, and I will therefore exclude the period 15 August through 5 January 1977 in the calculations of backpay due.

I reject Respondent's contention that backpay liability for Mr. Rodriguez should cease as of April 1977 because he had found substantially equivalent employment at that time. Clearly, his work for Fornasero was distinguishable from that of Respondent; the earning differential is reflected in ALOX 1 and RX 4. Since he made no decision not to return to Abatti until the January 23, 1981, offer of reinstatement, he is entitled to backpay less interim

earnings plus expenses for this period. However, I will calculate Mr. Rodriguez' interim earnings on a quarterly basis from 21 January 1978 through 25 January 1981, as he was steadily employed on a full time (year-round) basis during that period.

(c) The Calculations

I have followed General Counsel's daily calculations (ALOX 1) with adjustments for the period of illness (August 15 - December 31, 1976), and quarterly calculations from the period 21 January 1978. I make no reduction in the \$300 gasoline expenses claimed for 1976 as there is no indication on the record that any portion of this expense was contemporaneous with the period of Mr. Rodriguez' disability. See Appendices F-1 through F-6.

B. Weed, Thin, and Hoe

(1) Herlinda Avitua

(a) Facts

General Counsel provided information relating to some 35 interim jobs held by Ms. Avitua during her applicable backpay period -- 13 February 1976 - 17 November 1980 (See GCX 10). She had virtually no recollection of any times, dates, or places of said employment. Ms. Avitua did, however, relate her efforts to seek employment by going with a neighbor to look for work picking tomatoes, or coming to Calexico to find work sewing clothes, or cleaning in hotels. During one year, she drove to Mendota and worked for approximately two weeks weeding and thinning cotton, then went to Gilroy and Hollister to top garlic (for which she was paid piece rate of approximately \$30 for 3-4 days work). She also had various jobs sorting peaches in Banning, working in the raisins in

Manteca and Madera, with more permanent work in carrots with Cardinal Distributing Company from December to June of each year.

As she was living in her husband's house while working in the Imperial Valley for Respondent, Ms. Avitua also claims additional living expenses (\$15 per week) incurred during the periods referred to in GCX 10, page 2.

(b) Analysis and Conclusions

Apart from the general considerations concerning daily calculations, the only issue regarding this discriminatee is the reliability of the interim earning information. The burden of proof is upon the Respondent to show interim earnings which offset gross backpay. O. P. Murphy, supra. I have included all those interim earnings listed by General Counsel in GCX 10 with the exception of McAnally, which employment Ms. Avitua could not recall. Additionally, those interim employers recalled by Ms. Avitua (e.g. the tomato picking in Calexico) will be included, as well as those for which payroll stubs have been submitted (RX 3 and RX 9). I have specifically excluded the information from McAnally, because the "Herlinda Avitua" employed there, although carrying Ms. Avitua's social security number, was born in 1960. It was clear from the discriminatee's appearance that she was much older than the 22 years listed on the McAnally pay stubs. As the discriminatee could not recall this interim employment, I find insufficient evidence to include this information.

(c) The Calculations

I have followed General Counsel's daily calculations with adjustments for interim employment which have been added and/or

deleted according to the aforereferenced guidelines. The expense information is itemized as well. See Appendices G-1 through G-5.

(2) Jesus Solano

(a) Facts

The parties stipulated that the maximum backpay liability period ran from 2 February 1976 through 17 November 1980. Mr. Solano provided General Counsel with information concerning some 32 interim employers during this time period. (GCX 8). He had difficulty recollecting the dates and details of said employment. However, he described his efforts to seek work by daily attempts to speak with labor contractors and foremen in Calexico. He also went to the Union hiring hall in Calexico, and drove around to various growers in the Imperial Valley.

Mr. Solano participated in the strike at California Coastal commencing on January 1979, which lasted for more than one year. He received strike benefits of approximately \$25.00 per week, plus rations of potatoes, beans, rice, eggs, and lard. Mr. Solano was active in the strike throughout its duration, and was often present on the picket line. However, he testified that he would always look for work early in the morning before joining the strike activity.

For some period of time -- 17 May through 20 August 1979 -- Mr. Solano was disabled, having received a bullet wound from a .38 special at the hands of Abatti foreman Mr. Rios. Mr. Solano claimed medical expenses (\$1,166.00) paid to Dr. Juan Escobedo and to Pacos Pana Sanitarium in Mexicali for this injury. However, no backpay is claimed during this period.

Mr. Solano also testified to having purchased some land in

Sonora, Mexico, in 1968, which was utilized by a cotton association he helped form during the interim employment period. Mr. Solano indicated that he only spent one to two days every six months (generally Sundays) in working this land, and making "adjustments" in the association. He testified that he has received no earnings from this project.

Finally, Mr. Solano served one to two days in a Mexicali jail during this same interim period.

Solano claims various travel expenses incurred while seeking work, as well as the afore-referenced medical expenses which would have been covered under Abatti's medical plan.

(b) Analysis and Conclusions

The only individual issue raised with respect to the backpay due Mr. Solano concerned the receipt of strike benefits commencing on 19 January 1979. Respondent contends that there should be no backpay during this period because Mr. Solano's employment history (no interim earnings during this time period) suggests that Solano did not diligently seek work. I reject this view. Under NLRB precedent, strike benefits are not interim earnings deductible from gross, providing the discriminatee makes reasonable efforts to locate suitable interim employment. (Sioux Falls Stock Yards (1978) 236 NLRB 543). The courts and the NLRB have refused to draw the inference that strike benefits received by discriminatees must necessarily serve to take them out of the labor market during the periods such payments were made. See N.L.R.B. v. My Store, Inc. 468 F.2d 1146, 1151 (7th Cir. 1972) enf'g. as modified 181 NLRB 321 (1970), cert. denied 410 U.S. 910 (1973). The

record reflects that Mr. Solano did make such reasonable efforts, and I am reluctant to infer willful idleness by the mere fact that he was unsuccessful for some period of time. I thus conclude that Solano is entitled to backpay for the entire liability period.

(c) Calculations

I have followed General Counsel's daily calculations (ALOX 1, ALOX 2) with minor mathematical adjustments. The travel expenses and medical expenses have also been included. See Appendices H-1 through H-5.

(3) Elena Solano

(a) Facts

All parties stipulated that the maximum backpay period for Ms. Solano is 2 February 1976 through 17 November 1980. Ms. Solano provided information to General Counsel concerning some 27 interim jobs during this period (GCX 17). She described her efforts at seeking employment as follows: She would leave to seek work between 3:00 a.m. and 4:00 a.m. where the buses congregated to pick people up in Calexico -- in front of the Pizza Hut on Imperial Avenue, Conchita's Cafe, the Chevron gas station, California Market, Cook's Market, Bank of America parking lot, MacDonald's, behind the ice company, adjacent to Circle K, as well as other places. She would return home and then leave to seek work between 9:00 a.m. and noon at various stores, packing sheds, and cafeterias. On occasion, she would also look for work after noon -- e.g., at the cafeteria of the D'Anza Hotel in Calexico and at packing sheds in Holtville. Mr. Solano would accompany his wife and would drive the car.

With respect to the employers listed in General Counsel



Exhibit 17, Ms. Solano was unable to recall working at S & H Produce. She did, however, recall employment at Gourmet Harvest, as well as work in the cafeteria at the D'Anza Hotel. At the latter site, Ms. Solano worked for approximately two-to-three weeks at \$2.00 per hour, 8 hours per day, 5 days per week, sometime in 1977 or 1978, and quit because she did not get along with co-workers.

Ms. Solano further detailed efforts at finding work with California Coastal by registering at the Union hiring hall. At California Coastal she was paid originally some \$4.00 per hour for 8 hours a day, worked approximately 5½ to 6 days per week, and was paid by weekly check. She was laid off because of her low seniority and the lack of work.

Ms. Solano testified that she was disabled for a few days when cutting asparagus for Gourmet Harvest in March (March 17 - April 3) of 1977. She fell and injured her knee, being off work for approximately one month. She received her pay at Gourmet daily in cash (piece rate).

Additionally, she described a gall bladder condition which disabled her for approximately 10 weeks from 20 April through 30 June 1980, but denied any other disability or being out of the country for any period of time.

She denied asking for any extended leave of absence except for a two-day period when she went to Fresno for an uncle's funeral. She also testified to occasional picketing following the 1979 strike at California Coastal. For those weeks where Ms. Solano picketed for one or two days, she was paid \$25 per week from the Union, but she was unable to recall exactly how many such payments she

received.

Ms. Solano received her recall notice from the State but was never informed of same from the Respondent. She went to the Respondent's premises and accepted the offer of reinstatement.

Ms. Solano further claimed expenses for oil and tires necessary to seek interim employment of approximately \$200 per year for five years. On examination, however, she testified to having purchased two pairs of tires -- one expensive pair costing approximately \$200-\$300 and another set which was purchased at a swap meet for approximately \$80.00.

(b) Analysis and Conclusions

General Counsel and Charging Party agree that no backpay is owing for the periods of Ms. Solano's disability as revealed by her testimony.

Respondent suggests that Ms. Solano voluntarily quit her interim employment at the De Anza Hotel which constitutes a willful loss of earnings. (See Respondent's Brief, pages 25-27, citing Maggio-Tostado (1978) 4 ALRB No. 36.) The applicable NLRB standard inquires whether there is justification for quitting or rejecting the interim employment. Justified rejections of employment have been found where the foreman made the employee nervous by yelling (John S. Barnes Corporation (1975) 205 NLRB 585 [84 LRRM 1254]); or where the employee did not like working underground. (My Store, Inc., supra.) Unjustified "quittings" include attempts to avoid overtime and thereby minimize tax liability (Shell Oil Co. (1975) 218 NLRB 87); or simply not "liking" the work (Gary Aircraft Corp. (1974) 211 NLRB 554). In the instant case, Ms. Solano articulated

her reason for leaving the D'Anza Hotel: Co-workers would blame her for their performance and the supervisor gave them preference over her (R.T. Vol. VII, p. 32, 33, ll. 28, 1-10; p. 51, ll. 3-10.) In reviewing the entire episode of Ms. Solano's employment history following her termination by Respondent, I am not inclined to view her as prone to willful idleness. She was reasonably diligent in seeking work throughout the five-year period, and obtained some 27 interim jobs. The record reflects that she chose to leave only one job in question -- which paid \$2.00 per hour for reasons directly related to her perception of working conditions. There is no evidence that this perception was unreasonable, or indicative of willful idleness.

Nor should there be a tolling of backpay liability during the period she supported the California Coastal strike. Ms. Solano testified to her efforts in seeking work during this time, and this evidence (uncontradicted) indicates she was diligent in doing so.

I also find nothing unreasonable about Ms. Solano's gasoline expenses incurred while seeking interim employment (\$20.00 per week) which she has claimed should be divided between her and her husband; or the medical expenses for her in the sum of \$501, which would have been covered under Abatti's medical plan. I will reduce the expenses claimed for oil and tires to reflect the proof at hearing (\$330 for the two sets of tires).

(c) The Calculations

I have followed General Counsel's daily calculations with adjustments for earnings at the D'Anza Hotel (not originally included) and S & H Produce (excluded for lack of evidence), with

the inclusion of reasonable transportation expenses in seeking employment, as well as medical bills. See Appendices I-1 through I-5.

C. Sprinkler Crew

(1) Miguel Lopez Chavez, Jr.

(a) Facts

The relevant backpay period runs from 21 January 1976 through 25 January 1981. Mr. Chavez sought, but was unable to find, work in the Imperial Valley during all of 1976. He would look for employment with labor contractors and other growers two to three times a week. He named the following: Manuel Rodriguez, El Don Company, Juan Chavez, Constantin P. Martinez, Bruce Church, Araujo and Guillin, and others. He also went to the EDD office in Calexico.

Mr. Chavez obtained employment with Bud Antle cutting lettuce in February 1977 earning approximately \$4.16 per hour. He believes he completed the lettuce season with Bud Antle in 1977 which normally ended in late April. He does not recall work with others, although GCX 5 indicates employment with Mr. Martinez on March 7, El Don on March 14, Mr. Rodriguez on March 21, and El Don again on April 14, 1977 (See GCX 18). Mr. Chavez testified to having worked the lettuce harvest for Bud Antle in 1978. After April 1978, he again looked for work with other contractors, but was unable to find employment because he was not known to the foremen and had not previously performed work in the melons, onions or cotton which were the products being harvested during that time period.

On December 19, 1978, Mr. Chavez was rehired by Bud Antle in the lettuce harvest in the Imperial Valley. He was thereafter invited to the Salinas lettuce harvest with Bud Antle and worked with that company through the end of August of 1979. He worked approximately 9 days with El Don thinning lettuce before returning to work for Bud Antle on October 18, 1979. Mr. Chavez did not work for the period December 22 through January 2, 1979-80, but did not recall the reason for not working during that time. Chavez worked for Bud Antle during the 1980 lettuce harvest in the Imperial Valley and then again traveled to Salinas and worked there for Bud Antle through 15 July 1980. He returned to the Imperial Valley and started working again in the lettuce harvest for Bud Antle on November 1, 1980, where he has worked since.

Mr. Chavez testified that he wanted to return to work for Respondent because he would be able to work the entire year and would not have to look for work from one area to another during the various seasons. He rejected the reinstatement offer that Respondent made in January 1981, however, in light of his earnings at the time with Bud Antle, and his general happiness with his work.

Mr. Chavez claims that he incurred expenses of approximately \$60 in round-trip transportation from Calexico to Salinas by bus in 1979, \$25 of which was reimbursed by Bud Antle. He also indicated that his living expenses increased some \$20 per week for a four-month period because of his move to Salinas, that he had to pay \$10 per week for 16 weeks for bus rides to work, that he had incurred union dues of \$216 (\$12 per month for 18 months), and that he had increased laundry bills of \$5.00 per week for 16 weeks.

As Mr. Chavez lived with his parents and had his laundry done free of charge while he was in the Imperial Valley, he claims this to be an extra expense related to his work with Bud Antle in Salinas.

In 1980, Mr. Chavez claims bus trip expenses of \$70.00 round-trip from Salinas to Calexico and an additional \$50.00 per week for approximately 10 weeks for having to live in Salinas. The additional living expense includes laundry. Mr. Chavez claims to have paid approximately \$6 to \$7 per week for approximately 10 weeks for gas to and from work in Salinas.

(b) Analysis and Conclusions

All parties concede that the additional interim earning information provided by Mr. Chavez should be included in the backpay calculation. Respondent contends, however, that backpay should only accrue through December of 1978, since the discriminatee worked steadily for Bud Antle of California since that date. I do not agree. For the reasons articulated previously, I find it difficult to equate this interim employment with the discriminatee's work for Respondent -- the former was seasonal, involving lettuce harvest, and required traveling with the crop. The latter was full time, and the Board has already found that Respondent's failure to rehire Mr. Chavez and/or place him in alternative crews at the end of the sprinkler season was discriminatory conduct. Any wage differential in the two jobs will be reflected in the daily calculations. Insofar as Mr. Chavez' earnings with Bud Antle on a particular day were equal to or greater than what he would have been earning at Abatti, then, of course, there is no backpay accruing for that day.

Nor can Mr. Chavez' unarticulated contentment with his

interim employment constitute a waiver of his right to backpay and/or reinstatement. Until he has received and declined a genuine offer of reinstatement, there can be no tolling of backpay liability. See discussions, supra. I thus find Mr. Chavez to be entitled to backpay for the entire period, plus expenses incurred while seeking work, as well as the additional living expenses necessitated by his move to Salinas.

(c) The Calculations

I have followed General Counsel's daily calculations (ALOX 1, ALOX 2) making adjustments for interim earnings which were not previously made available to the parties (GCX 18). Exhibits are itemized in Appendices J-1 through J-6.

(2) Raul Jimenez

(a) Facts

Mr. Jimenez provided information concerning some 31 interim jobs from the date of his termination at Abatti (21 January 1976). He looked for work by going to Calexico and asking growers and labor contractors, and checking with the union hiring hall.

Mr. Jimenez' expenses in seeking interim employment are detailed in GCX 6. He also claims reimbursement for medical expenditures which would have been covered under Respondent's medical plan.

Mr. Jimenez' also detailed other expenditures including a \$300 relocation expense incurred in 1976. Jimenez testified that he had to move from his home in the Imperial Valley as he was no longer working and moved to Mexicali, where he paid no rent. However, in order to live in Mexicali, Mr. Jimenez had to purchase a stove and

refrigerator. Mr. Jimenez testified that the refrigerator cost approximately \$100, and he was uncertain as to the cost of the stove, but did recall expenses in hooking up the stove as well as a \$40.00 "Mordida" (bribe) that he had to pay the Mexican custom official in getting the furniture across the border. His total relocation expense -- including the deposit for electricity service necessitated by the move -- was \$300. Jimenez lived at the house in Mexicali for approximately six months and paid no rent.

Apart from travel expenses incurred while seeking work, Mr. Jimenez also claimed a \$600 loss for the sale of his car which he testified he was forced to sell for the sum of \$400 after having purchased it for \$1,000 two months previously in order to pay the medical expenses of his wife's pregnancy. Additionally, Jimenez claimed expenses in the purchase of a mobile home, which he bought in order to follow the grape harvest commencing in Coachella, California, in 1977. Mr. Jimenez paid no down payment for the mobile home, but purchased it by borrowing \$11,000 from the bank. Because the mobile home was defective, Jimenez returned it to the dealer approximately two months after the date of purchase. In return, he received a check for \$5,000 and a car worth approximately \$3,000. The check for \$5,000 was utilized to pay off a portion of the bank loan, and the total cost claimed (\$3,581) was apparently the balance owing on the trailer home.

Jimenez finally testified that he did not recall the reasons why he refused employment with Respondent on 15 October 1981, after having received Respondent's "offer" of reinstatement of October 7, 1981 (RX 5).



For the Respondent, sprinkler crew foreman Eddie Sanchez testified that he delivered a copy of the reinstatement offer to Jimenez' house in 1981, accompanied by a witness. He explained the offer to Mr. Jimenez, and the latter said he would have to speak with his attorney before deciding what to do. A couple of days later, Sanchez returned to Jimenez' house with another witness, at which time Jimenez rejected the offer stating that he couldn't come back to work because he had his own business doing cement work.

(b) Analysis and Conclusions

Respondent has stipulated that Mr. Jimenez' efforts at seeking interim employment were reasonable (R.T., Vol.III, p. 138, ll. 11-14). It contends, however, that backpay liability should be extinguished as of 8 October 1981 -- the date Mr. Jimenez rejected the reinstatement offer. Charging party suggests,<sup>13/</sup> on the other hand, that the offer to Mr. Jimenez -- that "this job will be temporary" -- is not in accord with the Board's order for unconditional offer of reinstatement without prejudice to his seniority or other rights and privileges. While I am concerned about the language of the offer -- particularly the reference to the word "temporary", despite the Board's finding that this discriminatee was entitled to full time employment -- there is insufficient evidence to link this language to Mr. Jimenez' decision

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13. General Counsel also suggests that October 8, 1981, should be the cutoff date for backpay liability.

to not return to work.<sup>14/</sup> The uncontradicted testimony of Mr. Sanchez suggests Jimenez rejected the offer because he had his own business. The discriminatee could not recall the reasons for his decision. I consider the statement made by Mr. Jimenez that he chose not to return to his former position because he was self-employed to constitute a voluntary removal of himself from the labor market. He cannot thereafter claim to have suffered any further losses by reason of Abatti's discriminatory conduct. Heinrich Motors, Inc., 166 NLRB 780 (1967); Underwood Machinery Company, 95 NLRB 1399 (1951). While certain factual resolutions may have been made by the Board adverse to Mr. Sanchez' testimony in the liability phase of the hearing, there was nothing in Sanchez' demeanor or from the record evidence which would compel me to reject his uncontradicted version of these sessions with Jimenez. I therefore conclude that Respondent's backpay liability terminates on 8 October 1981.

In accordance with the Board's order to "make each discriminatee whole for any loss of pay or other economic losses" (Emphasis added), I will include Mr. Jimenez' claim for the \$600.00 loss he claimed when he was forced to sell his car in order to pay

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14. There is also evidence on the record that Sanchez explained the "offer" in terms of allowing Jimenez to return to his former position as per the Board's order:

Q: Can you tell me what he said when you came the first time?

A: Well, when I showed him the letter I told him, 'If you want to come to work, you can come to work, doing the same thing you were doing' . . . (R.T. Vol. VII, p. 110, 11. 23-27.)

the medical expenses of his wife's pregnancy. Had he still been in Respondent's employ, he likely would not have been in such an economic predicament. I find sufficient evidence of the fair market value of the vehicle -- \$1,000.00 absent any evidence of destruction or untoward deterioration during the brief period he possessed the car -- to reasonably approximate his loss at \$600.00 (\$1,000.00 less \$400.00). The only precedent cited by the parties in this regard -- NLRB Casehandling Manual, Part III, Section 10610 -- would exclude capital losses incurred through the sale of such personal possessions. However, I find no applicable NLRB (or ALRB) precedent. Since the language of this Board's remedial order applies to economic losses as well as to loss of earnings encompassed under the usual NLRB order, I recommend this claim be allowed.

I reach a different result with respect to the \$300.00 expenses claimed for his move to Mexico, and for the mobile home loss. With respect to the former, even in the unlikely possibility that the Board's order would encompass payment of a bribe, I find insufficient evidence to establish any loss in this context. While Mr. Jimenez did have additional expenditures of \$300.00 he also paid no rent for some six months. With no evidence of the net loss -- if any -- I conclude there is insufficient evidence to support his claim in this regard. As to the mobile home loss, I do not find adequate evidence to support that loss either. While Mr. Jimenez did owe the bank for the original loan, at the end of the transaction he was in possession of an automobile. Certainly he had use of the mobile home -- and did not pay rent for at least two

months. On this record, I cannot conclude that he sustained any economic loss whatsoever which Respondent must compensate, and I will therefore recommend that this claim be disallowed.

(c) The Calculations

I have followed General Counsel's daily calculations (ALOX 1, 2) with adjustments for expenditures as noted for the period 21 January 1976 through 8 October 1981. See Appendices K-1 through K-6.

D. Irrigator -- Abelino Ortega

(1) Facts

The parties stipulated that the maximum backpay liability period is 27 January 1976 through 24 January 1981. Mr. Ortega worked for approximately one month -- from 18 November through 16 December 1978 with Sun Harvest. Ortega also detailed work (overhauling automobile engines) that he started in early 1978 in a Mexicali junkyard entitled "La Yarda El Tata" where he earned approximately 1,000 pesos (\$42.00 per week) until early 1980. At that time, Mr. Ortega commenced similar work in Mexicali for Antonio Lepe. He was paid according to the work (and sales) he performed, and earned approximately 1,500 to 2,000 pesos per week (approximately \$63 - \$84). Both jobs were paid on a cash basis, and involved approximately 5 to 6 days per week. This employment history was corroborated by employers Lepe and Portillo.

Mr. Ortega testified that he would look for work in Calexico early in the morning, go to "El Hoyo" and the union hall, and the unemployment office from 1976 until 1981, including mornings before he went to work in Mexicali. Ortega denied he was ever

physically unable to look for work or obtain work or ever refused work during this period. He did concede to having gone to Mexico City to see family and a Dr. Romero regarding his stomach condition, but testified that he also looked for work while he was in Mexico City.

Mr. Ortega testified to having seen several doctors regarding his stomach condition and pains in the lower back, but denies telling anyone that he was unable to work because of this ailment. He further denies that he told a Board agent that he was unable to accept Respondent's 1981 offer of reinstatement because he was disabled. Rather, Mr. Ortega stated that he talked to (then Field Examiner) David Arizmendi a little while after he received Respondent's offer, when he met Mr. Arizmendi at J.C. Penney's in Calexico. Ortega said that he would accept the offer if he had transportation to and from Respondent's premises. Mr. Arizmendi suggested that he would attempt to obtain a loan for Mr. Ortega from the Respondent in order for Mr. Ortega to purchase a car. In his next conversation with Arizmendi, Ortega was told that the Respondent did not agree to such an arrangement, and consequently Mr. Ortega rejected the offer of reinstatement. He denied refusing said offer of reinstatement because of physical disability.

Mr. Ortega claimed reimbursement for medical expenses (approximately \$2,000.00) for his daughter who was injured in an automobile accident in November 1977. No receipts or bills were provided, but Ortega claimed coverage under Respondent's medical plan for his daughter who was age 19 at the time of the injury.

Ortega also claimed that he had to sell a parcel of

unimproved land that he owned in Mexicali for approximately 80,000 to 100,000 pesos (\$3,333 to \$4,160 U.S. dollars). Ortega testified that he had to sell this land because he needed the money for his children's education and for their food. He further claimed expenses for gasoline for his trips from Mexicali to Calexico to find work in 1976-77 as well as an \$8.00 per month expense for the balance of the backpay period when he did not have his car and had to pay friends. Finally, Ortega claimed \$1.28 per week for approximately 204 weeks for those periods he was without a car, unable to obtain assistance from his friends, and utilized taxis ("peseros") in crossing the border to seek work.

The Respondent introduced Ortega's workers' compensation claim (RX 6) which sought permanent disability indemnity for the periods 5/74 to 11/74; 3/75 to present (8/10/78). Dr. James Lasry, a specialist in internal medicine, testified regarding two examinations given Mr. Ortega on 4 April 1979 and 16 April 1980. On the first visit, Mr. Ortega indicated that he was unable to work from January 1975 through November 1978 because he was too weak.<sup>15/</sup> On the second visit, Mr. Ortega told the doctor that he was unemployed since he had last been seen in the office because of pain in his back, stomach and kidneys.<sup>16/</sup> The doctor noted that Ortega's condition had deteriorated perceptibly and diagnosed the illness as

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15. This statement was made to the doctor through interpreter Josefina Mora. Both the interpreter and the medical appointment were arranged by Mr. Ortega's workers' compensation attorney, Mark Hoffman.

16. This examination was set up by the insurance company handling the workers' compensation claim.

Hansen's Disease (leprosy) which diagnosis was subsequently confirmed by a pathologist. Dr. Lasry opined that Mr. Ortega probably would have been able to do agricultural work during the 1979 visit, but probably not during the 1980 period. Dr. Lasry denied that Ortega ever told him that he was unable to seek work because of his incapacity.

Finally, Respondent introduced correspondence from Board agent David Arizmendi advising Abatti that Ortega was on disability and currently not able to work as of 2 March 1981 (RX 7). On examination, Mr. Arizmendi (now Regional Director) suggested that the reference to Mr. Ortega's disability was a result of his (Arizmendi's) "confusion". Arizmendi testified that he spoke to Ortega regarding the latter's disability, and Ortega referred to the 1974 incident in which he fell into a ditch. He denied that Ortega told him anything about not being able to work, but rather that Ortega wanted a car, and that when Respondent refused this request, Ortega rejected the offer of reinstatement.

## (2) Analysis and Conclusions

The focal point of contention is the extent to which Mr. Ortega's physical disabilities prevented him from obtaining and seeking interim employment.<sup>17/</sup> On the one hand, General Counsel has provided uncontradicted evidence of agricultural employment by Mr. Ortega for the period 1973 through January 1976 (with a period of six month disability), one month in November-December 1978; and

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17. There is no contention that the Hansen's disease was work-related, and thus somehow attributable to Respondent's discriminatory conduct.

continuous work with an automotive repairs establishment from March 1978 to the date of the hearing. On the other hand, Respondent has provided evidence from two sources -- Dr. Lasry and David Arizmendi -- to the effect that Mr. Ortega was too weak to do agricultural work during the backpay period. In reviewing the entire record, I conclude that Mr. Ortega's disability prevented him from seeking and obtaining agricultural employment from 1 January 1980. I reach this decision for the following reasons: The testimony of Dr. Lasry, supported by his notes, indicated that Mr. Ortega had admitted on 16 April 1980 that he was unemployed because of illness. Dr. Lasry concluded -- based on examination by Charging Party -- that Ortega would not have been physically able to do agricultural work at the time of the last evaluation (16 April 1980).<sup>18/</sup> Correspondence from Board agent Arizmendi revealed that Ortega was disabled in March 1981 and therefore unable to return to his former employment. I specifically do not credit Mr. Arizmendi's "confusion" regarding this issue, as I find it highly unlikely that there could be such lack of information or mistake on the part of a Board agent when accepting or rejecting an offer of reinstatement on behalf of one of the discriminatees. While Mr. Ortega denied ever having told anybody he was unable to work, it appears too much of a coincidence that two "independent sources"<sup>19/</sup>, would attribute statements to Mr. Ortega which would have removed him from the labor force during the

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18. See Canoa Moving and Storage (1982) 261 NLRB No. 92 [110 LRRM 1124].

19. In effect, the General Counsel was "prosecutor" for Mr. Ortega's unfair labor practice case, and the doctor was the agent of Mr. Ortega's workers' compensation attorney.



applicable period. I credit those latter sources over Mr. Ortega's testimony in this regard. While Ortega seemed reasonably sincere in demeanor and attempted to answer all questions in a straightforward manner, there is some suspicion that his statements regarding his interim employment history were tailored to the particular forum from which he sought relief. Thus, Dr. Lasry's notes indicated that Mr. Ortega was unemployed because of illness. Board Agent Arizmendi suggested a similar reason for Ortega's rejection of the Respondent's reinstatement offer.

In rejecting Respondent's contention that the entire backpay period should be tolled by reason of disability, I do not view Mr. Ortega's workers' compensation claim as dispositive of the matter. Apart from the provisions of Labor Code section 132 which prohibit discriminatory treatment by virtue of the mere filing of a workers' compensation claim, the employment record of Mr. Ortega clearly demonstrated his ability to do some agricultural work notwithstanding the permanent disability request. Thus, he worked at least for some period of time with Abatti after returning from his disability (prior to his termination), and again for some time in 1978 with Interharvest. Although there is some suspicion concerning Mr. Ortega's eleventh-hour revelation of interim work in Mexicali<sup>20/</sup>, coupled with the variegated reasons given for his unemployment during the period of his disability, I do not find sufficient evidence of discriminatee misconduct to extinguish the entire period. Cf. N.L.R.B. v. Flite Chief (9th Cir. 1981) 566 F.2d

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20. General Counsel was not provided with this information until the first day of the hearing.

1182 [106 LRRM 2810]. Dr. Lasry's notes -- in contrast to his testimony -- attribute the January 1976 through April 1978 unemployment to a strike, rather than to disability. Lasry agreed that Ortega was physically capable of performing agricultural work at least through April 1979. I find it highly unlikely that Mr. Ortega was willfully idle during the 1976-1979 period, or content with living on his \$42.00 per week salary at the automotive transmissions place.

Therefore, I conclude that Mr. Ortega did not become physically disabled for purposes of tolling backpay liability until 1 January 1980. Accordingly, I shall also recommend proration of the claimed gasoline expenses consistent with a finding of backpay liability from January, 1976 to December 31, 1979.

I recommend that the claim for Mr. Ortega's daughter's medical expenses be disallowed because she was 19 at the date of the accident, and the applicable policy covered dependents under 19 years of age (GCX 21).

### (3) The Calculations

I have included Mr. Ortega's interim earnings which were not reflected in General Counsel's daily calculations (ALOX 1, 2). Also, backpay calculations terminate as of 31 December 1979, as do expenses incurred. See Appendices L-1 through L-4.

### E. Tractor Driver -- Isidoro Andrade Prieto

#### (1) Facts

Mr. Andrade testified that he sought work in the Imperial Valley by going early in the morning two to three times a week to speak with various contractors and foremen. He also spoke to

friends in order to find work. Mr. Andrade confirmed interim employment at Valley Nitrogen and with Danny Dannenberg in 1976, with D'Arrigo Brothers and Samra & Thind in 1977, D'Arrigo Brothers and El Don (one day) in 1978, D'Arrigo Brothers and Glen Shumard in 1979, and D'Arrigo Brothers thereafter (GCX 13). All of these jobs involved machine operation. Andrade denied having suffered any disability or leaving the country during this period.

Andrade was employed at D'Arrigo Brothers at the time of the hearing earning approximately \$5.20 per hour for some 10 hours per day, six days per week, including overtime. While at Abatti, Mr. Andrade worked the same number of hours, but received no overtime and was paid approximately \$3.25 an hour in 1975 and \$3.50 an hour in 1976. Andrade's work with D'Arrigo was not year-round, having been laid off from 13 March through 16 April 1982, as well as for similar (and longer) spring periods in earlier years. Andrade testified that during the one and one-half years he worked for Abatti prior to his termination, he was only off work for some three to four days.

Finally Mr. Andrade claimed gasoline expenses incurred while seeking interim work of approximately \$15.00 per week for some 75 weeks between 1976 and 1981.

Andrade denied receiving Respondent's recall notice. He gave his address as 76 Heffernan in Heber, California, but stated that he received his mail through a post office box in Heber, as there was no mail service in that city. He stated that Abatti workers (some of the discriminatees) had informed him that there was no work available with Respondent, and that he had heard "lately"

from Tony Abatti that there was no work for him (R.T. Vol. VI, p. 6, 11. 5-8).

For Respondent, attorney Merrill Storms, Jr., described his efforts to transmit the offers of reinstatement to the discriminatees since the Board order issued in mid-October 1980. Discriminatee Andrade was mailed two post cards and one certified letter to his Heber residence address. Mr. Storms received the returned copy of the certified letter indicating that it had not been delivered to Mr. Andrade and transferred same to (then Field Examiner) David Arizmendi of the regional office. Correspondence with Board agents suggested that there was no issue as to the offer of reinstatement to any discriminatee as of 18 January 1982. (RX 12.)

Donna Tackett -- Abatti's payroll clerk -- corroborated that two post cards and one certified letter were sent to Mr. Andrade's residence address. Neither post card was returned.

## (2) Analysis and Conclusions

The parties agree that the first day of backpay liability for Mr. Andrade is 24 January 1976. Both General Counsel and Charging Party contend that Mr. Andrade never received a valid offer of reinstatement at least until 24 May 1982.<sup>21/</sup> Respondent contends that backpay should be tolled effective January 1981 when it made good faith efforts to communicate its offer of reinstatement to Mr. Andrade.

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21. At the hearing, Respondent offered reinstatement to Mr. Andrade effective 17 May, without waiving its position that the earlier offer tolled liability. By my order of 16 July 1982, I amended the outside date of liability to 24 May 1982 -- the first day upon which Mr. Andrade was allowed to work. See Bob Maddox Plymouth, Inc. (1981) 256 NLRB No. 136 [107 LRRM 1325].

While the efforts of Respondent in this regard are somewhat more than perfunctory, and General Counsel's position has created the impression that there was no real issue of reinstatement until raised by Charging Party, the purpose of the Board's remedial order is to make the discriminatee whole. Any (good faith) confusion on the part of General Counsel and the Respondent should not deprive the discriminatee of the backpay to which he is due. Capitol Temptrol Corporation (1979) 243 NLRB No. 91 [102 LRRM 1106].

Under the NLRB, a letter offer of reinstatement which does not reach the addressee is not equivalent to a valid offer of reinstatement. (Marlene Industries (1978) 234 NLRB 285 [97 LRRM 1351], citing Ertel Manufacturing Corp. (1964) 147 NLRB 312 [56 LRRM 1197].) If, however, the offer, whether received by the addressee or not, is a bona fide offer, i.e., made in good faith, it will serve to toll the backpay period. (Knickerbocker Plastic Co., Inc. (1961) 132 NLRB 1209 [48 LRRM 1505].) But the ultimate obligation to reinstate the discriminatee is not relieved even by bona fide offer of reinstatement if not received. (Jay Company, Inc. (1953) 103 NLRB 1645, 1647, [32 LRRM 1116] enf'd (9th Cir. 1954) 227 F.2d 416, because an unsuccessful attempt to correct a violation of the Act does not accomplish the purpose of the Act. (See Sachs & Sons and Helen Sachs, Inc. (1962) 135 NLRB 1199 [49 LRRM 1681].) The burden of proving that a valid offer has been made falls on the original wrongdoer. (Rafaire Refrigeration Corp. (1973) 207 NLRB 523 [84 LRRM 1535].)

The National Labor Relations Board has carved certain exceptions to this doctrine, however. In Monroe Feed Store Co.

(1959) 122 NLRB 1479 [43 LRRM 1334], there was no bona fide offer of reinstatement because there were available to the employer several sources of information regarding the current and correct address of the discriminatee. In Jay Company, Inc., supra, "A few inquiries might and probably would have resulted in information where the discriminatee might have been contacted, and the Board was therefore justified in concluding that the duty had not been fulfilled. In Gladwin Industries Inc. (1970) 183 NLRB 280, a letter of reinstatement did not operate to toll backpay, because the respondent clearly had other available measures to contact the discriminatee -- namely through the union -- to communicate the offer. There, the respondent's reliance on a letter was hardly justified since previous correspondence with the same addressee had been returned, and the respondent was also aware of an interim employer.

In the instant case, no effort was made to telephone Mr. Andrade or to reach him at his residence (as was done in Mr. Jimenez' case), even though there was evidence that Respondent had this information available. (R.T., Vol. VI, p. 19, ll. 19-28, p. 20, ll. 1-18, p. 21, ll. 26-28, p. 22, ll. 1-16). It would not have been difficult for the Respondent to query either the union, Mr. Andrade himself by telephone, or to send a representative to his current residence address. That they failed to attempt any of these avenues of communication once having received return of the unopened certified letter renders their efforts susceptible to the Monroe Food exception. These factors, coupled with Mr. Andrade's own unsuccessful efforts to seek reinstatement, and his uncontradicted

version of his "recent" conversation with Tony Abatti, leave me to conclude that Respondent's efforts were insufficient to toll backpay liability. As stated by the NLRB, "Between the employer whose unlawful conduct gave rise to the problem in the first place, and the employee-victim of this wrongdoing, the employer rather than the innocent employee should bear the consequences of the unlawful conduct." Marlene Industries Corp., et al. (1978) 234 NLRB 285, citing Monroe Food Store (1959) 122 NLRB 1479; Jay Company Inc. (9th Cir. 1954) 227 F.2d 419.

I also reject Respondent's contentions regarding the "substantially equivalent employment" theory it has espoused to toll backpay liability. As referred previously, the wage differential and the availability of full-time employment as opposed to the part-time/seasonal work Mr. Andrade obtained are significant factors in deciding that the two jobs were not substantially equivalent. Indeed, Mr. Andrade chose reinstatement (when finally offered during the hearing). All reasonable expenses should thus be allowed for the entire period.

### (3) The Calculations

I will follow General Counsel's daily calculations (ALOX 1, 2) with adjustments for additional interim earnings, as well as the extension of the gross pay period through 24 May 1982. Also, any overtime earned by Mr. Andrade through interim employment has been included insofar as those hours parallel the hours he would have worked for Respondent had there been no discrimination. For example, a 10 hour/six day/week at D'Arrigo is juxtaposed with a similar week at Abatti. The net daily differentials are then added

to arrive at a monthly net backpay figure due. See United Aircraft Corporation (1973) 204 NLRB 1068, 1073-1074 [83 LRRM 1411]; NLRB Casehandling Manual, Part III, Section 10604.3. (See Appendices M-1 through M-7.)

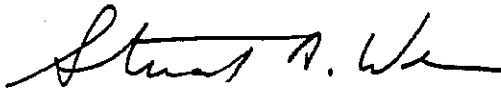
RECOMMENDED REMEDY

Respondent's obligation to make each of the named discriminatees whole will be discharged by payment of the following sums to each, plus interest at the rate of 7% per annum.

Lorenzo Chavarria	\$19,138.78
Reynaldo Bermea	6,701.41
Ramon Berumen	22,059.17
Francisco Ortiz	24,656.81
Andres Montoya	30,170.89
Augustin Rodriguez	9,041.33
Herlinda Avitua	19,057.56
Jesus Solano	22,404.47
Elena Solano	21,399.84
Miguel Lopez Chavez, Jr.	29,661.89
Raul Jimenez	28,331.90
Abelino Ortega	37,620.74
Isidoro Andrade Prieto	29,833.90

DATED: 4 October 1982

AGRICULTURAL LABOR RELATIONS BOARD

  
STUART A. WEIN  
Administrative Law Officer



APPENDIX A-1  
through  
APPENDIX A-6

LORENZO CHAVARRIA

(23 January 1976 - 25 January 1981)

# APPENDIX A-1

## LORENZO CHAVARRIA

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	155.77	14.00	141.77
February	490.03		490.03
March	623.51	92.30	531.21
April	558.95	311.45	273.06
May	487.04	219.65	286.17
June	531.80	419.91	145.92
July	447.87	352.98	99.00
August	627.41	448.00	214.79
September	545.43	470.40	109.24
October	771.68	603.28	201.01
November	602.85	453.60	249.25
December	526.44	322.65	<u>242.63</u>
TOTAL NET BACKPAY =			<u><u>\$2,984.08</u></u>

### Expenses:

Calexico-Coachella (round-trip)	-	10.00
Coachella-Sacramento	-	10.00
Sacramento-Mexicali	-	<u>15.00</u>
Total	=	\$35.00

### Adjustments from General Counsel Specifications (ALOX 1, 2):

March - mathematical error in calculation of net backpay.  
 April - error in interim wages as reflected in RX 2 (p. 946).  
 May - error in interim wages as reflected in RX 2 (p. 946).  
 June - error in interim wages as reflected in RX 2 (p. 946).  
 July - error in interim wages as reflected in RX 2 (p. 946).

Note: daily average wage adjusted to \$14.96/day (22 days at \$329.22).

October - inclusion of 12 days interim wages at Woodland, California (\$25.20 per day at \$3.15 per hour for an 8 hour day).

APPENDIX A-1  
(Continued)

LORENZO CHAVARRIA

November - inclusion of 18 days interim earnings at Woodland, California (\$25.20 per day at \$3.15 per hour for 8 hours per day).

December - inclusion of interim wages from RX 2, p. 946, not reflected in the backpay specification. Daily averages of \$22.40 per day assigned to December 10, 11.

# APPENDIX A-2

## LORENZO CHAVARRIA

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	550.24	337.50	212.74
February	499.59	388.80	124.55
March	609.27	583.20	47.27
April	609.93	561.60	65.80
May	630.19	102.97	530.26
June	454.06		454.06
July	587.48	346.34	254.48
August	602.74	259.20	353.20
September	691.44	561.60	130.01
October	799.49	574.39	231.53
November	678.21	428.40	149.81
December	549.87	27.20	<u>522.67</u>
TOTAL NET BACKPAY =			<u><u>\$3,076.38</u></u>

### Expenses:

Mexicali-Calexico	-	5.00
Coachella-Woodland (Round-trip)	-	10.00
Gasoline expenses		
(4 months at \$30.00/month)	-	<u>120.00</u>
Total	=	<u>\$145.00</u>

### Adjustments:

January - interim wages reflected in RX 2 (p. 948), but not included in General Counsel specification (ALOX 1, ALOX 2). These interim wages have been averaged over the month and allocated as per ALOX 1.

July - interim wages reflected in RX 2 (p. 948), but not included in General Counsel specification (ALOX 1, ALOX 2). These interim wages have been averaged over the month and allocated as per ALOX 1.

APPENDIX A-2  
(Continued)

LORENZO CHAVARRIA

October 17-31 - inclusion of 13 days interim wages at Woodland, California (\$25.20 per day at \$3.15 per hour for an 8 hour day).

November 1-19 - inclusion of 17 days interim wages at Woodland, California (\$25.20 per day at \$3.15 per hour for an 8 hour day).

December - full credit for interim wages of \$27.27 -- no indication of date earned.

# APPENDIX A-3

## LORENZO CHAVARRIA

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	683.51	405.65	277.86
February	662.84	372.00	291.13
March	624.29	355.33	321.61
April	699.67	796.46	
May	709.93	319.62	414.18
June	502.68	294.14	288.27
July	495.45	306.10	283.51
August	780.22	500.72	247.94
September	759.16		759.16
October	714.89		714.89
November	601.42		601.42
December	504.49		<u>504.49</u>
TOTAL NET BACKPAY =			<u><u>\$4,704.46</u></u>

### Expenses:

Coachella-Mexicali-Coachella	-	10.00
Gasoline expenses		
(4 months at \$30.00/month)	-	<u>120.00</u>
Total	=	<u>\$130.00</u>

### Adjustments:

January - interim wages reflected in RX 2 (p. 949, 950), but not included in ALOX 1, ALOX 2. Daily average of \$16.90.

# APPENDIX A-4

## LORENZO CHAVARRIA

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	608.65	583.20	25.45
February	614.18	514.80	95.83
March	622.57	477.01	160.13
April	601.29	500.42	113.20
May	611.94	450.02	168.34
June	651.95	320.86	274.29
July	407.21	591.00	
August	724.50	518.16	210.04
September	688.48		688.48
October	975.94		975.94
November	800.60	455.79	344.81
December	642.84	586.74	<u>70.06</u>
TOTAL NET BACKPAY =			<u><u>\$3,126.57</u></u>

### Expenses:

Coachella-Mexicali-Coachella	-	15.00
Gasoline expenses		
(4 months at \$30.00/month)	-	<u>120.00</u>
Total	=	<u>\$135.00</u>

### Adjustments:

January - additional interim wages reflected in RX 2 (p. 952, 953), not included in ALOX 1 or ALOX 2. Averaged over 24 days (\$24.30 per day).

February - additional interim wages reflected in RX 2. Averaged over 23 days (\$22.38 per day).

March - additional interim wages averaged over 25 days (\$19.08 per day).

April - additional interim wages averaged over 22 days (\$22.74 per day).

APPENDIX A-4  
(Continued)

LORENZO CHAVARRIA

May - additional interim wages averaged over 25 days (\$18.00 per day).  
June - additional interim wages averaged over 25 days (\$15.61 per day).  
July - additional interim wages averaged over 17 days (\$34.70 per day).  
August - additional interim wages averaged over 28 days (\$18.50 per day).  
November - additional interim wages averaged over 25 days (\$18.23 per day).  
December - additional interim wages averaged over 23 days (\$25.51 per day).  
Note: All additional wages reflected in RX 2, pp. 952-953.



APPENDIX A-5

LORENZO CHAVARRIA

<u>1980</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	569.04	930.41	
February	657.16	475.64	182.26
March	700.57	585.56	153.29
April	715.94	554.55	138.40
May	765.14		765.14
June	553.89	590.53	50.44
July	588.14	615.22	23.37
August	760.82		760.82
September	788.34		788.34
October	907.64		907.64
November	687.01		687.01
December	768.76	803.95	<u>37.03</u>
TOTAL NET BACKPAY =			<u><u>\$4,493.74</u></u>

Expenses:

Mexicali-Coachella-Mexicali	-	10.00
Gasoline expenses		
(5 months at \$30.00/month)	-	<u>150.00</u>
Total	=	<u>\$160.00</u>

Adjustments:

January - additional interim wages reflected in RX 2 (p. 951), not included in ALOX 1, ALOX 2. Averaged over 19 days at \$48.96 per day.

February - additional interim wages averaged over 22 days (\$21.62 per day).

April - additional interim wages averaged over 24 days (\$24.39 per day).

June - additional interim wages averaged over 23 days (\$25.67 per day).

APPENDIX A-5  
(Continued)

LORENZO CHAVARRIA

July - additional interim wages averaged over 22 days (\$27.96 per day).

December - additional interim wages averaged over 26 days (\$30.92 per day).

Note: All additional interim wages reflected in RX 2 (p. 951).

APPENDIX A-6

LORENZO CHAVARRIA

<u>1981</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	353.85	205.10	<u>148.55</u>
TOTAL NET BACKPAY =			<u><u>\$148.55</u></u>

Adjustment:

Interim wages reflected in RX 2 (p. 954) not included in ALOX 1, ALOX 2. Averaged over 11 days at \$18.64 per day.

RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	2,984.08	35.00
1977 -	3,076.38	145.00
1978 -	4,704.46	130.00
1979 -	3,126.57	135.00
1980 -	4,493.74	160.00
1981 -	<u>148.55</u>	
TOTAL =	\$18,533.78	\$605.00

TOTAL OWING:    \$19,138.78

APPENDIX B-1  
through  
APPENDIX B-6

REYNALDO BERMEA

(29 January 1976 - 29 January 1981)

APPENDIX B-1

REYNALDO BERMEA

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings.</u>	<u>Net Backpay</u>
January	49.84		49.84
February	490.08		490.08
March	623.51		623.51
April	558.96	115.05	447.39
May	487.04	213.60	288.50
June	531.80	411.58	183.56
July	447.87	347.49	165.47
August	627.41		627.41
September	545.43		545.43
October	771.68		771.68
November	602.85		602.85
December	526.44	526.50	<u>9.36</u>
TOTAL NET BACKPAY =			<u><u>\$4,805.08</u></u>

Expenses:

Round-trips (3) Calexico-Coachella (100 miles at \$.20 per mile)	- 60.00
Round-trip Coachella-Firebaugh (350 miles at \$.20 per mile)	- 70.00
Gasoline expenses in seeking work in Imperial Valley (\$10.00 per week for 46 weeks)	- 460.00
Total	= <u>\$590.00</u>

Adjustments:

December - interim earnings at Pili Voz Ranch - \$20.25 per day  
for 6 days per week for 26 days equals \$526.50.

APPENDIX B-2

REYNALDO BERMEA

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>	<u>Housing Allowance</u>	<u>Net Owing</u>
January	550.24	479.50	87.72		
February	499.59	446.18	63.39		
March	609.27	565.11	44.16	40.00	4.16
April	> 1,694.18	1,632.54	61.64	120.00	
May					
June					
July	> 1,881.66	1,632.54	249.12	120.00	129.62
August					
September					
October	> 2,027.57	1,759.18	268.39	120.00	148.39
November					
December					
TOTAL NET BACKPAY =					<u><u>\$282.17</u></u>

Adjustments:

January - interim earnings at Pili Voz Ranch, \$20.25 per day for 6 days per week for 22 days (\$445.50).  
 February - interim earnings at Pili Voz Ranch, \$20.25 per day for 6 days per week for 21 days (\$425.25).  
 March - commencement of monthly/quarterly calculations.

APPENDIX B-3

REYNALDO BERMEA

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>	<u>Housing Allowance</u>	<u>Net Owing</u>
January	> 1,970.64	1,755.00	215.64	120.00	95.64
February					
March					
April	> 1,912.28	1,901.25	11.03	40.00	:
May					
June					
July	> 2,034.83	2,057.25			
August					
September					
October	> 1,820.80	1,894.90			
November					
December					
TOTAL NET BACKPAY =					<u><u>\$95.64</u></u>

Adjustments:

Monthly/quarterly analysis. Also, interim wages adjusted to reflect RX 4.

APPENDIX B-4

REYNALDO BERMEA

<u>1979</u>	<u>Gross</u> <u>Wages</u>	<u>Interim</u> <u>Earnings</u>	<u>Net</u> <u>Backpay</u>	<u>Housing</u> <u>Allowance</u>	<u>Net</u> <u>Owing</u>
January	> 1,845.40	1,031.76	813.64	120.00	693.64
February					
March					
April	> 1,865.18	2,371.50			
May					
June					
July	> 1,820.90	2,007.70			
August					
September					
October	> 2,419.38	2,415.40	3.98	40.00	
November					
December					
TOTAL NET BACKPAY =					<u><u>\$693.64</u></u>

Adjustments:

Monthly/quarterly calculations. Interim earnings adjusted to reflect information contained in RX 2 (p. 867) including bonus.



APPENDIX B-5

REYNALDO BERMEA

<u>1980</u>		<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>	<u>Housing Allowance</u>	<u>Net Owing</u>
January	>	1,926.77	1,638.86	287.91	120.00	167.91
February						
March						
April	>	2,034.97	2,275.00			
May						
June						
July	>	2,137.30	1,950.00	187.30	120.00	67.30
August						
September						
October	>	2,363.41	2,654.00			
November						
December						
TOTAL NET BACKPAY =						<u><u>\$235.21</u></u>

Adjustments:

Quarterly/monthly calculations. Additional interim earnings reflected in RX 2 (pp. 877, 889, 890).

APPENDIX B-6

REYNALDO BERMEA

<u>1981</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	353.65	690.00	_____
TOTAL NET BACKPAY =			<u>\$ -0-</u>

RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	4,805.08	590.00
1977 -	282.17	
1978 -	95.64	
1979 -	693.64	
1980 -	235.21	
1981 -	_____	_____
TOTAL =	\$6,111.41	\$590.00

TOTAL OWING:    \$6,701.41

APPENDIX C-1  
through  
APPENDIX C-6

RAMON BERUMEN

(23 January 1976 - 23 March 1981)

# APPENDIX C-1

## RAMON BERUMEN

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	155.77	14.00	141.77
February	490.08		490.08
March	623.51		623.51
April	558.96	192.00	366.96
May	487.04	422.40	84.51
June	531.80	422.40	116.43
July	447.87	192.20	264.39
August	627.41		627.41
September	545.43		545.43
October	771.68	499.20	272.48
November	602.85	316.80	294.98
December	526.44		<u>526.44</u>
TOTAL NET BACKPAY =			<u><u>\$4,354.39</u></u>

### Expenses:

Gasoline (\$15.00 per week for 25 weeks) = \$375.00

APPENDIX C-2

RAMON BERUMEN

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	550.24	587.45	14.50
February	499.59	390.60	146.53
March	609.27	595.20	70.70
April	609.93	603.40	52.47
May	630.19	516.80	180.91
June	454.06	488.40	62.67
July	587.48	473.60	201.00
August	602.74		602.74
September	691.44	102.40	592.58
October	799.49	494.40	323.09
November	678.21	461.20	257.49
December	549.87		<u>549.87</u>
TOTAL NET BACKPAY =			<u><u>\$3,054.55</u></u>

Expenses:

Gasoline (\$15.00 per week for 12 weeks) = \$180.00

APPENDIX C-3

RAMON BERUMEN

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	683.51	348.80	357.84
February	662.84	505.60	165.65
March	624.29	497.60	152.82
April	699.67		699.67
May	709.93		709.43
June	502.68		502.48
July	495.45		495.45
August	780.22	51.20	740.68
September	759.16		759.16
October	714.89	422.79	294.62
November	601.42	492.38	125.19
December	504.49	273.54	<u>240.89</u>
TOTAL NET BACKPAY =			<u><u>\$5,243.88</u></u>

Expenses:

Gasoline (24 weeks at \$15.00 per week) = \$360.00

APPENDIX C-4

RAMON BERUMEN

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	608.65	294.15	331.71
February	614.18	353.35	294.34
March	622.57	383.13	280.39
April	601.29	172.05	429.24
May	611.94		611.94
June	651.95		651.95
July	407.21		407.21
August	724.50	268.25	484.99
September	688.48	199.80	521.13
October	975.94	810.34	242.24
November	800.60	656.00	167.94
December	642.84	598.87	<u>89.33</u>
SUBTOTAL =			\$4,512.41
Less Adjustment (see below) =			- <u>308.41</u>
TOTAL NET BACKPAY =			<u><u>\$4,204.00</u></u>

Expenses:

Gasoline (18 weeks at \$15.00 per week) = \$270.00

Adjustment:

Reduction of \$308.41 for two weeks in Mexico (22 April through 6 May)

APPENDIX C-5

RAMON BERUMEN

<u>1980</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	569.04	467.68	133.97
February	657.16	489.48	210.87
March	700.57	497.96	251.43
April	715.94	503.98	275.40
May	765.14	646.80	228.40
June	553.89	443.65	211.27
July	588.14	90.14	515.13
August	760.82	136.00	637.21
September	788.34	243.51	563.40
October	907.64	804.97	142.83
November	687.01	712.92	83.23
December	768.76	758.53	<u>107.12</u>
TOTAL NET BACKPAY =			<u><u>\$3,360.26</u></u>

Expenses:

Gasoline (8 weeks at \$15.00 per week) = \$120.00



# APPENDIX C-6

## RAMON BERUMEN

<u>1981</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	353.65	336.08	28.32
February	805.37	553.73	258.33
March	602.44	367.15	<u>250.44</u>
TOTAL NET BACKPAY =			<u><u>\$537.09</u></u>

## RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	4,354.39	375.00
1977 -	3,054.55	180.00
1978 -	5,243.88	360.00
1979 -	4,204.00	270.00
1980 -	3,360.26	120.00
1981 -	<u>537.09</u>	
TOTAL =	\$20,754.17	\$1,305.00

TOTAL OWING:    \$22,059.17

APPENDIX D-1  
through  
APPENDIX D-6

FRANCISCO ORTIZ

(24 January 1976 - 23 March 1981)

APPENDIX D-1  
FRANCISCO ORTIZ

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	140.70		140.70
February	490.08		490.08
March	623.51		623.51
April	558.96		558.96
May	487.04		487.04
June	531.80		531.80
July	447.87		447.87
August	627.41		627.41
September	545.43		545.43
October	771.68		771.68
November	602.85		602.85
December	526.44		<u>526.44</u>
TOTAL NET BACKPAY =			<u><u>\$6,353.77</u></u>

Expenses:

Gasoline (\$5.00 per week times 50 weeks) = \$250.00

APPENDIX D-2

FRANCISCO ORTIZ

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	550.24		550.24
February	499.59		499.59
March	609.27		609.27
April	609.93	304.00	297.40
May	630.19	615.16	72.90
June	454.06	1,061.08	24.08
July	587.48	62.72	528.89
August	602.74		602.74
September	691.44	24.00	667.44
October	799.49	546.00	264.56
November	678.21	589.75	121.22
December	549.87	463.75	<u>164.98</u>
TOTAL NET BACKPAY =			<u><u>\$4,403.31</u></u>

Expenses:

Gasoline (\$5.00 per week times 27 weeks) = \$135.00

APPENDIX D-3

FRANCISCO ORTIZ

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	683.51	252.00	444.34
February	662.84	329.00	356.78
March	624.29	294.00	353.47
April	699.67	481.25	218.42
May	709.93	449.99	314.66
June	502.68	1,106.95	148.02
July	495.45	133.19	370.31
August	780.22		780.22
September	759.16	48.10	711.06
October	714.89	426.69	308.98
November	601.42	594.16	31.57
December	504.49	206.93	<u>301.26</u>
TOTAL NET BACKPAY =			<u><u>\$4,339.09</u></u>

Expenses:

Gasoline (\$5.00 per week for 25 weeks) = \$125.00

APPENDIX D-4

FRANCISCO ORTIZ

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	608.65	323.75	314.77
February	614.18	327.45	312.84
March	622.57	286.93	356.25
April	601.29	338.73	275.51
May	611.94	366.65	315.55
June	651.95	1,175.35	165.25
July	407.21		407.21
August	724.50	229.40	537.98
September	688.48	18.50	669.98
October	975.94	748.97	244.92
November	800.60	562.75	288.97
December	642.84	679.10	<u>65.18</u>
TOTAL NET BACKPAY =			<u><u>\$3,954.41</u></u>

Expenses:

Gasoline (24 weeks at \$5.00 per week) = \$120.00

APPENDIX D-5

FRANCISCO ORTIZ

<u>1980</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	569.04	349.55	241.44
February	657.16	485.93	201.33
March	700.57	206.13	805.25
April	715.94	537.98	247.77
May	765.14	603.18	234.79
June	553.89	597.89	319.73
July	588.14	143.91	481.67
August	760.82	410.48	406.73
September	788.34	263.50	533.34
October	907.64	759.33	173.80
November	687.01	545.75	202.07
December	768.76	516.53	<u>307.92</u>
TOTAL NET BACKPAY =			<u><u>\$4,155.84</u></u>

Expenses:

Gasoline (\$5.00 per week for 18 weeks) = \$90.00

APPENDIX D-6

FRANCISCO ORTIZ

<u>1981</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	353.65	302.21	62.19
February	805.37	363.13	448.81
March	602.44	414.75	<u>194.39</u>
TOTAL NET BACKPAY =			<u><u>\$705.39</u></u>

Expenses:

Gasoline (\$5.00 per week for 5 weeks) = \$25.00

RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	6,353.77	250.00
1977 -	4,403.31	135.00
1978 -	4,339.09	125.00
1979 -	3,954.41	120.00
1980 -	4,155.84	90.00
1981 -	<u>705.39</u>	<u>25.00</u>
TOTAL =	\$23,911.81	\$745.00

TOTAL OWING: \$24,656.81



APPENDIX E-1  
through  
APPENDIX E-5

ANDRES MONTOYA

(2 February 1976 - 25 November 1980)

APPENDIX E-1  
ANDRES MONTOYA

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January			
February	490.08		490.08
March	623.51		623.51
April	558.96		558.96
May	487.04		487.04
June	531.80		531.80
July	447.87		447.87
August	627.41		627.41
September	545.43		545.43
October	771.68		771.68
November	602.85	118.50	514.45
December	626.44	247.69	<u>325.56</u>
TOTAL NET BACKPAY =			<u><u>\$5,923.79</u></u>

Expenses:

Medical expenses = \$208.00

APPENDIX E-2

ANDRES MONTOYA

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	550.24	540.24	79.95
February	499.59	295.80	243.44
March	609.27	423.30	255.64
April	609.93	345.50	291.64
May	630.19	379.16	275.89
June	454.06	385.05	93.45
July	587.48		587.48
August	602.74		602.74
September	691.44	132.34	566.59
October	799.49	69.00	730.49
November	678.21	129.00	549.13
December			
TOTAL NET BACKPAY =			<u><u>\$4,276.44</u></u>

## APPENDIX E-3

ANDRES MONTOYA

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January			
February			
March	624.29	311.30	341.59
April	699.67	339.60	370.37
May	709.43	169.80	566.43
June	502.68		502.68
July	495.45		495.45
August			
September	759.16		759.16
October	714.89	20.47	694.42
November	601.42		601.42
December	504.49		<u>504.49</u>
TOTAL NET BACKPAY =			<u><u>\$4,836.01</u></u>

APPENDIX E-4

ANDRES MONTOYA

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	608.65		608.65
February	614.18		614.18
March	622.57		622.57
April	601.29		601.29
May	611.94	131.67	480.27
June	651.95	14.63	637.32
July	407.21		407.21
August	724.50		724.50
September	688.48		688.48
October	975.94		975.94
November	800.60		800.60
December	642.84		<u>642.84</u>
TOTAL NET BACKPAY =			<u>\$7,803.85</u>

# APPENDIX E-5

## ANDRES MONTOYA

<u>1980</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	569.04		569.04
February	657.16		657.16
March	700.57		700.57
April	715.94		715.94
May	765.14	100.56	664.58
June	553.89	351.66	279.14
July	588.14	243.34	392.56
August	760.82		760.82
September	788.34		788.34
October	907.64		907.64
November	687.01		687.01
December			
TOTAL NET BACKPAY =			<u><u>\$7,122.80</u></u>

## RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	5,923.79	208.00
1977 -	4,276.44	
1978 -	4,836.01	
1979 -	7,803.85	
1980 -	<u>7,122.80</u>	
TOTAL =	\$29,962.89	\$208.00

TOTAL OWING:    \$30,170.89

APPENDIX F-1  
through  
APPENDIX F-6

AUGUSTIN RODRIGUEZ

(20 January 1976 - 25 January 1981)

APPENDIX F-1

AUGUSTIN RODRIGUEZ

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	49.84		49.84
February	490.08		490.08
March	623.51		623.51
April	558.96		558.96
May	487.04		487.04
June	531.80	682.44	56.31
July	447.87	682.44	18.40
August	252.67	372.28	12.88
September			
October			
November			
December			
TOTAL NET BACKPAY =			<u>\$2,297.02</u>

Expenses:

Gasoline	-	300.00
4 doctor visits at \$5.00 per visit	-	20.00
Medicine	-	<u>150.00</u>
Total	=	\$470.00



APPENDIX F-2

AUGUSTIN RODRIGUEZ

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	507.83		507.83
February	499.59	309.50	366.30
March	609.27	673.10	196.21
April	609.93	913.81	72.39
May	630.19	702.18	180.58
June	454.06	1,036.29	23.73
July	587.48	922.20	49.08
August	602.74	446.84	208.28
September	691.44	464.00	273.58
October	799.49	688.66	145.45
November	678.21	402.68	306.73
December	549.87		<u>549.87</u>
TOTAL NET BACKPAY =			<u><u>\$2,880.03</u></u>

Expenses:

Gasoline	-	200.00
Doctor visits	-	50.00
Medicine	-	<u>150.00</u>
Total	=	\$400.00

APPENDIX F-3

AUGUSTIN RODRIGUEZ

<u>1978</u>		<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	>	1,970.64	1,615.33	355.31
February				
March				
April	>	1,911.70	3,297.67	
May				
June				
July	>	2,034.83	2,273.11	
August				
September				
October	>	1,820.80	1,940.00	
November				
December				
TOTAL NET BACKPAY =				<u>\$355.31</u>

Expenses:

Gasoline	-	20.00
4 doctor visits	-	80.00
Medicine	-	<u>150.00</u>
Total	=	\$250.00

APPENDIX F-4

AUGUSTIN RODRIGUEZ

<u>1979</u>		<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	>	1,846.03	3,275.25	
February				
March				
April	>	1,865.18	3,891.33	
May				
June				
July	>	1,820.19	1,774.67	45.52
August				
September				
October	>	2,419.38	2,922.54	
November				
December				
TOTAL NET BACKPAY =				<u><u>\$45.52</u></u>

Expenses:

Gasoline	-	30.00
Medical visits	-	60.00
Medicine	-	<u>150.00</u>
Total	=	\$240.00

APPENDIX F-5

AUGUSTIN RODRIGUEZ

<u>1980</u>		<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	>	1,926.77	2,093.70	
February				
March				
April	>	2,034.97	2,675.26	
May				
June				
July	>	2,137.30	1,633.34	503.96
August				
September				
October	>	2,363.41	1,096.24	1,267.17
November				
December				
TOTAL NET BACKPAY =				<u><u>\$1,771.13</u></u>

Expenses:

Medical visits	-	60.00
Medicine	-	<u>100.00</u>
Total	=	\$160.00

APPENDIX F-6

AUGUSTIN RODRIGUEZ

<u>1981</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	353.65	181.33	<u>172.32</u>
TOTAL NET BACKPAY =			<u>\$172.32</u>

RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	2,297.02	470.00
1977 -	2,880.03	400.00
1978 -	355.31	250.00
1979 -	45.52	240.00
1980 -	1,771.13	160.00
1981 -	<u>172.32</u>	<u>          </u>
TOTAL =	\$7,521.33	\$1,520.00

TOTAL OWING: \$9,041.33

APPENDIX G-1  
through  
APPENDIX G-5

HERLINDA AVITUA

(13 February 1976 - 17 November 1980)

APPENDIX G-1

HERLINDA AVITUA

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January			
February	230.83		230.83
March	338.78	45.00	247.28
April	72.54		72.54
May			
June			
July			
August			
September			
October	47.84		47.84
November	587.21	519.44	117.85
December	599.25	71.30	<u>529.13</u>
TOTAL NET BACKPAY =			<u><u>\$1,245.47</u></u>

Expenses:

Public bus transportation	-	15.00
Additional living expenses		
(\$15.00 per week for 6 weeks)	-	<u>90.00</u>
Total	=	\$105.00

APPENDIX G-2

HERLINDA AVITUA

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	434.19		434.19
February	450.84		450.84
March	521.58		521.58
April	553.48	229.80	329.25
May	783.26	111.00	673.77
June	554.66	573.85	104.15
July	130.50	171.14	6.52
August	426.60		426.60
September	366.60		366.60
October	711.70		711.70
November	709.25	30.00	679.25
December	648.01	214.09	<u>348.68</u>
TOTAL NET BACKPAY =			<u><u>\$5,053.13</u></u>

Expenses:

Public bus transportation	-	15.00
Additional expenses		
(\$15.00 per week for 16 weeks)	-	240.00
Total	=	<u>\$255.00</u>

Adjustments:

Work in Calexico.



APPENDIX G-3

HERLINDA AVITUA

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	689.52	540.06	134.68
February	740.95	724.90	71.72
March	686.34	491.62	207.31
April	373.02	377.02	38.22
May	678.65	812.61	21.59
June	595.92	562.16	171.23
July			
August	425.31	57.75	379.31
September	346.00		346.00
October	625.77	223.08	403.95
November	687.43	31.50	655.93
December	307.66	293.50	<u>25.85</u>
TOTAL NET BACKPAY =			<u><u>\$2,455.79</u></u>

Expenses:

Public bus transportation	-	15.00
Additional expenses		
(32 weeks at \$15.00 per week)	-	<u>480.00</u>
Total	=	\$495.00

Adjustments:

For interim earnings reflected in payroll stubs (RX 3).

APPENDIX G-4

HERLINDA AVITUA

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	508.14	672.78	23.65
February	426.35	456.28	57.38
March	432.97	402.67	54.40
April	466.85	262.68	211.81
May	568.33	437.46	146.44
June	382.87	208.44	176.19
July	547.10		547.10
August	540.71		540.71
September	287.22		287.22
October	892.49		892.49
November	784.61	27.43	757.18
December	799.84	161.90	<u>637.94</u>
TOTAL NET BACKPAY =			<u><u>\$4,332.51</u></u>

Expenses:

Public bus transportation	-	15.00
Additional expenses		
(\$15.00 per week for 30 weeks)	-	<u>450.00</u>
Total	=	\$465.00

APPENDIX G-5

HERLINDA AVITUA

<u>1980</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	743.53	141.84	601.69
February	673.74	435.01	254.59
March	502.55	355.14	147.41
April	645.65	385.53	269.77
May	748.44	577.54	252.69
June	646.01	141.87	504.14
July	391.18		391.18
August	672.95		672.95
September	339.13		339.13
October	767.11		767.11
November			
December			
TOTAL NET BACKPAY =			<u><u>\$4,200.66</u></u>

Expenses:

Public bus transportation	-	15.00
Additional expenses		
(\$15.00 per week for 29 weeks)	-	435.00
Total	=	<u>\$450.00</u>

APPENDIX G-5  
(Continued)

HERLINDA AVITUA

RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	1,245.47	105.00
1977 -	5,053.13	255.00
1978 -	2,455.79	495.00
1979 -	4,332.51	465.00
1980 -	<u>4,200.66</u>	<u>450.00</u>
TOTAL =	\$17,287.56	\$1,770.00

TOTAL OWING:    \$19,057.56

APPENDIX H-1  
through  
APPENDIX H-5

JESUS SOLANO

(2 February 1976 - 17 November 1980)

APPENDIX H-1

JESUS SOLANO

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January			
February	429.99		429.99
March	338.78		338.78
April	72.54		72.54
May			
June			
July			
August			
September			
October	47.84	46.56	1.28
November	587.21	410.00	193.37
December	599.25	259.47	<u>361.74</u>
TOTAL NET BACKPAY =			<u><u>\$1,397.70</u></u>

Expenses:

Transportation (\$10.00 per week for 18 weeks) = \$180.00

APPENDIX H-2

JESUS SOLANO

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	434.19	23.00	411.19
February	450.84		450.84
March	521.58	433.23	113.81
April	553.48	113.22	455.99
May	783.26	24.00	759.26
June	554.66	89.00	481.81
July	130.50		130.50
August	426.60		426.60
September	366.60		366.60
October	711.70	454.85	293.53
November	709.25	517.74	196.31
December	648.01	533.64	<u>143.09</u>
TOTAL NET BACKPAY =			<u>\$4,229.53</u>

Expenses:

Transportation (\$10.00 per week for 30 weeks) = \$300.00

# APPENDIX H-3

## JESUS SOLANO

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	689.52	28.40	662.32
February	740.95	150.15	595.08
March	686.34	248.86	442.32
April	373.02	155.14	226.28
May	678.65	204.90	524.59
June	595.92		595.92
July			
August	425.31		425.31
September	346.00		346.00
October	625.77	379.25	258.87
November	687.43	454.36	244.75
December	307.66	271.95	<u>81.76</u>
TOTAL NET BACKPAY =			<u><u>\$4,403.20</u></u>

### Expenses:

Transportation (\$10.00 per week for 24 weeks) = \$240.00



APPENDIX H-4

JESUS SOLANO

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	508.14	173.90	371.12
February	426.35		426.35
March	432.97		432.97
April	466.85		466.85
May	358.46		358.46
June			
July			
August	216.05		216.05
September	287.22	148.40	175.86
October	892.49		892.49
November	784.61		784.61
December	799.84		<u>799.84</u>
TOTAL NET BACKPAY =			<u><u>\$4,924.60</u></u>

Expenses:

Transportation (\$10.00 per week for 36 weeks)	-	360.00
Medical	-	<u>1,166.00</u>
Total	=	<u>\$1,526.00</u>

Adjustment:

May 17 through August 20, 1979, disability (RX 2, pp.  
1120-1121).

APPENDIX H-5

JESUS SOLANO

<u>1980</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	743.53		743.53
February	673.74		673.74
March	502.55		502.55
April	645.65	119.46	528.50
May	748.44	169.35	579.43
June	646.01	25.90	620.11
July	391.18		391.18
August	672.95	327.60	409.83
September	339.13	555.82	71.67
October	767.11	414.94	442.90
November			
December			
TOTAL NET BACKPAY =			<u>\$4,963.44</u>

Expenses:

Transportation (\$10.00 per week for 24 weeks) = \$240.00

APPENDIX H-5  
(Continued)

JESUS SOLANO

RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	1,397.70	180.00
1977 -	4,229.53	300.00
1978 -	4,403.20	240.00
1979 -	4,924.60	1,526.00
1980 -	<u>4,963.44</u>	<u>240.00</u>
TOTAL =	\$19,918.47	\$2,486.00

TOTAL OWING:    \$22,404.47

APPENDIX I-1  
through  
APPENDIX I-5

ELENA SOLANO

(2 February 1967 - 17 November 1980)

APPENDIX I-1

ELENA SOLANO

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January			
February	429.99		429.99
March	338.78		338.78
April	72.54		72.54
May			
June			
July			
August			
September			
October	47.84	42.03	6.59
November	587.21	424.64	194.95
December	599.25	326.46	<u>368.41</u>
TOTAL NET BACKPAY =			<u><u>\$1,411.26</u></u>

Expenses:

Gasoline (\$10.00 per week for 14 weeks) = \$140.00

# APPENDIX I-2

## ELENA SOLANO

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	434.19		434.19
February	450.84	16.13	434.71
March	326.64	257.02	79.53
April	529.15	544.10	10.64
May	783.26	160.63	616.41
June	554.66	106.75	476.06
July	130.50		130.50
August	426.60		426.60
September	366.60		366.60
October	711.70	428.95	364.47
November	709.25	537.10	209.25
December	648.01	539.93	<u>113.28</u>
TOTAL NET BACKPAY =			<u>\$3,662.24</u>

### Expenses:

Gasoline (\$10.00 per week for 30 weeks) = \$300.00

### Adjustemnts:

February mathematical error in net calculation. March 17 through April 3 disability (RX 2, p. 1184).

APPENDIX I-3

ELENA SOLANO

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	689.52	312.48	355.60
February	740.95	403.83	340.64
March	686.34	314.53	410.88
April	373.02	205.45	226.28
May	678.65	204.90	473.75
June	895.92	240.00	355.92
July			
August	425.31		425.31
September	346.00	22.29	326.49
October	625.77	426.43	209.84
November	687.43	373.38	311.15
December	307.66	247.90	<u>94.80</u>
TOTAL NET BACKPAY =			<u><u>\$3,530.66</u></u>

Expenses:

Gasoline (\$10.00 per week for 20 weeks)	-	200.00
Medical bills	-	<u>501.00</u>
Total	=	\$701.00

APPENDIX I-4

ELENA SOLANO

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	508.14	210.90	341.74
February	426.35		426.35
March	432.97		432.97
April	466.85		466.85
May	568.33		568.33
June	382.87		382.87
July	547.10		547.10
August	540.71		540.71
September	287.22		287.22
October	892.49		892.49
November	784.61		784.61
December	799.84		<u>799.84</u>
TOTAL NET BACKPAY =			<u><u>\$6,471.08</u></u>

Expenses:

Gasoline (\$10.00 per week for 50 weeks) = \$500.00



APPENDIX I-5

ELENA SOLANO

<u>1980</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	743.53		743.53
February	673.74		673.74
March	502.55	324.81	181.33
April	433.43		433.43
May			
June			
July	391.18		391.18
August	672.95		672.95
September	339.13		339.13
October	767.11	88.80	678.31
November			
December			
TOTAL NET BACKPAY =			<u>\$4,113.60</u>

Expenses:

Gasoline (\$10.00 per week for 24 weeks) = \$240.00

Adjustments:

Gallbladder disability 1 April through 10 June 1980 (RX 2, pp. 1184, 1190).

APPENDIX J-1  
through  
APPENDIX J-6

MIGUEL LOPEZ CHAVEZ, JR.

(21 January 1976 - 25 January 1981)

## APPENDIX J-1

MIGUEL LOPEZ CHAVEZ, JR.

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	250.50	8.40	242.10
February	548.57		548.57
March	688.61		688.61
April	525.43		525.43
May	695.86		695.86
June	700.95		700.95
July	649.37		649.37
August	615.23		615.23
September	718.52		718.52
October	960.68		960.68
November	752.13		752.13
December	768.74		<u>768.74</u>
TOTAL NET BACKPAY =			<u><u>\$7,866.19</u></u>

APPENDIX J-2

MIGUEL LOPEZ CHAVEZ, JR.

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	730.06		730.06
February	661.29	418.72	307.21
March	508.05	52.00	430.75
April	556.35	23.60	532.75
May	973.45		973.45
June	658.89		658.89
July			
August			
September	626.78		626.78
October	1,019.72		1,019.72
November	897.07		897.07
December	686.41	159.93	<u>534.48</u>
TOTAL NET BACKPAY =			<u><u>\$6,711.16</u></u>

Adjustments:

Interim earnings reflected in GCX 18.

APPENDIX J-3

MIGUEL LOPEZ CHAVEZ, JR.

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	208.08	32.48	180.95
February			
March			
April			
May			
June	136.74		136.74
July			
August			
September	787.54		787.54
October	1,076.97	102.00	974.97
November	817.97		817.97
December	545.08		<u>545.08</u>
TOTAL NET BACKPAY =			<u><u>\$3,443.25</u></u>

Adjustment:

Interim earnings included in GCX 18.

APPENDIX J-4

MIGUEL LOPEZ CHAVEZ, JR.

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	588.97	389.72	254.28
February	549.23	417.87	202.12
March	157.62	105.04	68.39
April	150.03	180.29	
May	1,186.38	297.51	888.87
June			
July	161.50	141.26	55.50
August			
September	740.24		740.24
October	1,169.62	511.28	695.83
November	1,026.50	204.71	821.79
December	838.18	21.00	<u>817.18</u>
TOTAL NET BACKPAY =			<u><u>\$4,544.20</u></u>

Expenses:

Round-trip Salinas-Calexico less reimbursement	-	35.00
Excess living expenses (\$80.00 per month for 4 months)	-	320.00
Transportation to work (\$10.00 per week for 16 weeks)	-	160.00
Laundry (\$5.00 per week for 16 weeks)	-	<u>80.00</u>
Total	=	<u>\$595.00</u>

APPENDIX J-5

MIGUEL LOPEZ CHAVEZ, JR.

<u>1980</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	711.96	740.23	106.02
February	720.44	566.20	156.59
March	1,096.49	696.25	442.72
April	989.04	474.45	541.50
May	1,609.58	152.82	1,493.51
June	839.44	888.74	331.77
July	548.30	290.90	298.17
August			
September	333.49	213.00	128.13
October	1,223.07		1,223.07
November	988.14	519.84	468.30
December	1,029.73	561.42	<u>466.31</u>
TOTAL NET BACKPAY =			<u><u>\$5,656.09</u></u>

Expenses:

Round-trip Salinas-Calexico	-	70.00
Additional living expenses (\$50.00 per week for 10 weeks)	-	500.00
Gasoline (\$6.00 per week for 10 weeks)	-	<u>60.00</u>
Total	=	\$630.00

Adjustment:

Family sick leave July 15 through September 20, 1980 (RX 2, p. 1010).

APPENDIX J-6

MIGUEL LOPEZ CHAVEZ, JR.

<u>1981</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	420.67	612.67	_____
TOTAL NET BACKPAY =			<u><u>\$ -0-</u></u>

RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	7,866.19	
1977 -	6,711.16	
1978 -	3,443.25	
1979 -	4,544.20	595.00
1980 -	5,656.09	630.00
1981 -	_____	<u>216.00</u> Union due
TOTAL =	\$28,220.89	\$1,441.00
<u>TOTAL OWING:</u>	<u>\$29,661.89</u>	



APPENDIX K-1  
through  
APPENDIX K-6

RAUL JIMENEZ

(21 January 1976 - 8 October 1981)

APPENDIX K-1

RAUL JIMENEZ

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	250.50	8.40	242.10
February	548.57	16.25	532.32
March	688.61		688.61
April	525.43	284.00	271.96
May	695.86	26.00	672.30
June	700.95	154.89	561.54
July	649.37	192.08	496.25
August	615.23	373.18	284.89
September	718.52	519.68	203.18
October	960.68	714.90	277.27
November	752.13	115.80	641.02
December	768.74	690.00	<u>131.76</u>
TOTAL NET BACKPAY =			<u><u>\$5,003.20</u></u>

Expenses:

Medical	-	241.00
Loss of car	-	600.00
Transportation (\$25.00 per week for 25 weeks)	-	<u>625.00</u>
Total	=	\$1,466.00

# APPENDIX K-2

## RAUL JIMENEZ

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	730.06	849.37	97.54
February	661.29	212.00	466.89
March	508.05		508.05
April	556.35	111.30	463.05
May	973.45	286.50	686.95
June	658.89	369.96	317.05
July			
August			
September	626.78	576.00	99.52
October	1,019.72	745.00	290.97
November	897.07	624.50	278.82
December	686.41	516.25	<u>170.11</u>
TOTAL NET BACKPAY =			<u><u>\$3,378.95</u></u>

### Expenses:

Transportation (\$25.00 per week for 14 weeks) = \$350.00

APPENDIX K-3

RAUL JIMENEZ

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	208.08	188.13	21.08
February			
March			
April			
May			
June	136.74	136.32	6.58
July			
August			
September	787.54		787.54
October	1,076.97	68.16	1,008.81
November	817.97	443.04	405.34
December	545.08	244.52	<u>317.83</u>
TOTAL NET BACKPAY =			<u><u>\$2,547.18</u></u>

Expenses:

Medical	-	108.00
Transportation (\$25.00 per week for 20 weeks)	-	<u>500.00</u>
Total	=	<u>\$608.00</u>

# APPENDIX K-4

## RAUL JIMENEZ

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	588.97	346.78	280.80
February	549.23	493.30	143.93
March	157.62	175.03	
April	150.03	203.20	
May	1,186.38	815.79	381.57
June			
July	161.50		161.50
August			
September	740.24	217.60	522.64
October	1,169.62	136.00	1,041.48
November	1,026.50	780.00	270.65
December	838.18	750.58	<u>148.80</u>
TOTAL NET BACKPAY =			<u><u>\$2,951.37</u></u>

### Expenses:

Medical	-	269.00
Transportation (\$25.00 per week for 12 weeks)	-	<u>300.00</u>
Total	=	<u>\$569.00</u>

APPENDIX K-5

RAUL JIMENEZ

<u>1980</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	711.96	614.87	150.34
February	720.44	638.88	123.01
March	475.14	756.00	354.11
April	989.04	840.00	176.28
May	1,609.58	840.00	775.00
June	839.44	760.00	132.25
July	886.19	532.50	394.21
August			
September	873.90	420.00	496.14
October	1,223.07	309.00	933.04
November	988.14		988.14
December	1,029.73	408.00	<u>698.79</u>
TOTAL NET BACKPAY =			<u><u>\$5,221.31</u></u>

Expenses:

Medical	-	1,006.00
Transportation (\$25.00 per week for 14 weeks)	-	<u>350.00</u>
Total	=	\$1,356.00

APPENDIX K-6

RAUL JIMENEZ

<u>1981</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	420.67	234.00	233.42
February	895.91	444.00	503.71
March	999.23	978.00	163.30
April	1,010.04	144.00	893.85
May	667.36	381.00	285.76
June	357.56		357.56
July	615.59		615.59
August			
September	683.70		683.70
October	188.00		188.00
November			
December			
TOTAL NET BACKPAY =			<u>\$3,924.89</u>

Expenses:

Medical	-	256.00
Transportation (\$25.00 per week for 28 weeks)	-	<u>700.00</u>
Total	=	\$956.00

APPENDIX K-6  
(Continued)

RAUL JIMENEZ

RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	5,003.20	1,466.00
1977 -	3,378.95	350.00
1978 -	2,547.18	608.00
1979 -	2,951.37	569.00
1980 -	5,221.31	1,356.00
1981 -	<u>3,924.89</u>	<u>956.00</u>
TOTAL =	\$23,026.90	\$5,305.00

TOTAL OWING:    \$28,331.90



APPENDIX L-1  
through  
APPENDIX L-4

ABELINO ORTEGA

(27 January 1976 - 31 December 1979)

APPENDIX L-1

ABELINO ORTEGA

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	50.00		50.00
February	468.00		468.00
March	757.50		757.50
April	769.16		769.16
May	826.00		826.00
June	780.00		780.00
July	470.00		470.00
August	900.00		900.00
September	546.66		546.66
October	749.16		749.16
November	400.00		400.00
December	700.00		<u>700.00</u>
TOTAL NET BACKPAY =			<u><u>\$7,416.48</u></u>

APPENDIX L-2

ABELINO ORTEGA

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	550.00		550.00
February	885.00		885.00
March	900.00		900.00
April	1,020.00		1,020.00
May	1,167.50		1,167.50
June	1,015.00		1,015.00
July	870.00		870.00
August	855.00		855.00
September	1,047.50		1,047.50
October	545.00		545.00
November	600.00		600.00
December	686.00		<u>686.00</u>
TOTAL NET BACKPAY =			<u><u>\$10,141.00</u></u>

APPENDIX L-3

ABELINO ORTEGA

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	369.75		369.75
February	493.50		493.50
March	1,022.00	168.00	864.00
April	1,071.00	168.00	903.00
May	1,202.00	210.00	992.00
June	884.30	168.00	716.30
July	1,250.65	168.00	1,082.65
August	1,425.00	210.00	1,215.00
September	1,312.50	168.00	1,144.50
October	973.50	168.00	805.50
November	695.20	443.52	389.34
December	612.80	186.50	<u>427.30</u>
TOTAL NET BACKPAY =			<u><u>\$9,402.84</u></u>

# APPENDIX L-4

## ABELINO ORTEGA

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	604.90	168.00	436.90
February	689.90	168.00	521.90
March	1,064.80	168.00	896.80
April	1,200.00	210.00	990.00
May	1,139.80	168.00	971.80
June	1,139.80	168.00	971.80
July	1,004.60	210.00	794.60
August	1,260.00	168.00	1,092.00
September	1,162.50	168.00	994.50
October	1,071.00	210.00	861.00
November	901.00	168.00	733.00
December	969.00	210.00	<u>759.00</u>
TOTAL NET BACKPAY =			<u><u>\$10,023.30</u></u>

## RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	7,416.48	Gasoline (\$8.00 per month for
1977 -	10,141.00	47 months) = \$376.00
1978 -	9,402.84	Taxi expense (\$1.28 per week
1979 -	<u>10,023.30</u>	for 204 weeks) = <u>\$261.12</u>
TOTAL =	\$36,983.62	\$637.12

TOTAL OWING:    \$37,620.74

APPENDIX M-1  
through  
APPENDIX M-7

ISIDORO ANDRADE PRIETO

(24 January 1976 - 24 May 1982)

APPENDIX M-1

ISIDORO ANDRADE PRIETO

<u>1976</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	234.50		234.50
February	577.50		577.50
March	896.00		896.00
April	721.00		721.00
May	901.25	649.04	374.51
June	1,067.50	38.48	1,029.02
July	941.50	650.53	303.91
August	1,015.00	962.01	68.88
September	805.00	430.46	399.04
October	941.50	938.60	48.00
November	656.50	651.75	31.81
December	886.00	507.80	<u>381.18</u>
TOTAL NET BACKPAY =			<u><u>\$5,065.35</u></u>

Expenses:

Gasoline (\$15.00 per week for 20 weeks) = \$300.00

APPENDIX M-2

ISIDORO ANDRADE PRIETO

<u>1977</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	844.00	214.14	664.00
February	800.00	839.06	43.34
March	856.00	692.53	139.58
April	972.00	752.75	219.25
May	980.00	752.75	235.47
June	1,028.00	762.06	275.91
July	820.00	853.45	40.00
August	848.00	767.70	134.70
September	1,016.00	1,073.07	18.47
October	936.00	944.98	77.26
November	1,184.50	1,029.25	187.45
December	960.50	875.00	<u>118.50</u>
TOTAL NET BACKPAY =			<u><u>\$2,153.93</u></u>

Expenses:

Gasoline (\$15.00 per week times 3 weeks) = \$45.00

Adjustment:

February 1977: \$41.15 interim wages applied to February 14 rather than February 19 (RX 2, p. 810) therefore total interim earnings for the month are \$839.06.



APPENDIX M-3

ISIDORO ANDRADE PRIETO

<u>1978</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	469.63	525.00	40.38
February	743.75	770.00	127.50
March	807.50	351.47	565.53
April	892.50	193.97 Bonus	698.53
May	1,037.00		1,037.00
June	1,316.26	32.00	1,284.26
July	1,032.63	452.50	593.85
August	1,187.73	1,086.00	134.82
September	1,196.53	1,086.00	134.79
October	977.88	1,086.00	14.39
November	1,030.91	855.23	226.40
December	1,024.28	850.70	<u>208.89</u>
TOTAL NET BACKPAY =			<u><u>\$5,066.34</u></u>

Expenses:

Gasoline (\$15.00 per week for 17 weeks) = \$255.00

Adjustments:

Bonus for week ending 4/8/78 (\$193.97). See RX '2, p. 811.

APPENDIX M-4

ISIDORO ANDRADE PRIETO

<u>1979</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	746.17	556.57	193.22
February	995.63	989.65	96.46
March	1,022.08	136.80	898.46
April	1,154.57	174.02	980.55
May	1,262.79		1,262.79
June	1,415.10		1,415.10
July	1,214.21	579.15	738.60
August	1,187.71	1,074.31	130.92
September	993.41	1,147.00	45.92
October	1,029.00	1,176.00	
November	972.65	1,107.40	4.90
December	864.85	1,068.20	<u>34.30</u>
TOTAL NET BACKPAY =			<u><u>\$5,801.22</u></u>

Expenses:

Gasoline (\$15.00 per week times 18 weeks) = \$270.00

Adjustments:

Bonus for week ending 4/14/79 (\$174.02) -- averaged over 5 days  
at \$34.41 per day. See RX 2, p. 812.

APPENDIX M-5

ISIDORO ANDRADE PRIETO

<u>1980</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	752.15	852.60	66.15
February	551.25		551.25
March	1,100.05		1,100.05
April	1,127.00	172.61	954.39
May	1,286.25		1,286.25
June	1,183.35	784.00	404.25
July	1,178.45	1,143.80	90.65
August	1,082.90	1,078.00	9.80
September	1,200.50	1,190.70	34.30
October	1,291.15	1,327.90	
November	882.00	779.10	142.10
December	1,597.40	1,078.00	<u>539.00</u>
TOTAL NET BACKPAY =			<u><u>\$5,178.19</u></u>

Expenses

Gasoline (\$15.00 per week times 17 weeks) = \$255.00

Adjustment:

Bonus for week ending 4/12/80 (\$172.61) -- averaged over 6 days at \$28.77 per day (RX 2, p. 813).

## APPENDIX M-6

ISIDORO ANDRADE PRIETO

<u>1981</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	914.00	798.00	193.30
February	991.38	490.00	594.83
March			
April	803.40		803.40
May	1,313.27		1,313.27
June	1,179.36	200.20	983.91
July	1,466.48	1,383.40	174.17
August	1,260.50	1,201.40	126.49
September	1,149.74	1,353.10	177.66
October	1,027.44	1,158.10	48.93
November	957.90	1,060.80	
December	1,190.94	1,300.00	<u>3.36</u>
TOTAL NET BACKPAY =			<u><u>\$4,419.32</u></u>

# APPENDIX M-7

## ISIDORO ANDRADE PRIETO

<u>1982</u>	<u>Gross Wages</u>	<u>Interim Earnings</u>	<u>Net Backpay</u>
January	530.13	670.00	
February	818.84	1,040.00	
March	1,107.25	520.00	612.55
April	870.35	468.00	<u>412.00</u>
TOTAL NET BACKPAY =			<u><u>\$1,024.55</u></u>

## RECAPITULATION

<u>Year</u>	<u>Total Back Pay</u>	<u>Expenses</u>
1976 -	5,065.35	300.00
1977 -	2,153.93	45.00
1978 -	5,066.34	255.00
1979 -	5,801.22	270.00
1980 -	5,178.19	255.00
1981 -	4,419.32	
1982 -	<u>1,024.55</u>	
TOTAL =	\$28,708.90	\$1,125.00

TOTAL OWING:    \$29,833.90